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Minnesota. laws. statutes, etc. *Compilation*

GENERAL STATUTES OF^{cf} MINNESOTA

SUPPLEMENT 1917

CONTAINING THE AMENDMENTS TO THE GENERAL STATUTES
AND OTHER LAWS OF A GENERAL AND PERMANENT
NATURE, ENACTED BY THE LEGISLATURE
IN 1915, 1916, AND 1917

WITH NOTES OF ALL APPLICABLE DECISIONS

COMPILED BY

FRANCIS B. TIFFANY

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1918

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MAR 15 1918

PREFACE

THIS volume contains all the laws, general and permanent in their character, now in force which were enacted at the sessions of 1915, 1916, and 1917. The arrangement follows the chapters and subdivisions of the General Statutes of 1913. The sections of the General Statutes which have been amended are inserted in their proper order. New provisions, which did not amend any section of the General Statutes, but which relate to the subject-matter of the chapter in the General Statutes, are inserted in the most appropriate place in the chapter to which they relate. Some provisions which did not relate to the subject-matter of any chapter in the General Statutes are made the subject of new chapters. By turning to the appropriate chapter and section in this volume, it will be ascertained whether the law as contained in the General Statutes has been repealed or amended, whether there has been new legislation on the same subject, and whether there have been pertinent decisions.

New sections are distinguished from the original or amended sections of the General Statutes by the manner of numbering. New sections have the same number, in brackets, as the last preceding section of the General Statutes, and the bracketed numbers are followed by numerals indicating the order of the new sections. Thus, the numbers [67-] 1, [67-] 2, [67-] 3, indicate that the sections are new and that they follow next after section 67 of the General Statutes. A new chapter is distinguished by its heading, which is inclosed in brackets, the chapter number being followed by a letter indicating the order; for example: [Chapter 31A].

Both the General Statutes and the Constitution, as well as the new laws, have been fully annotated by the editorial staff of the publishers with citations of Minnesota decisions covering 162 Northwestern Reporter. In order to save space in citing cases, the references contain the sign — to stand for the Minnesota Reports, and the sign + to stand for the Northwestern Reporter.

Particular attention is called to one feature of the annotations. At the end of each reading note containing the decision of the court is a reference to the topic and Key-Number of the American Digest, Key-Number System, showing where cases are classified in the American Key-Number Digests which bear upon the subject of the particular note. This will enable any one having access to the American Digest, Key-Number System, readily to trace other and later cases bearing upon the subject-matter of the statute.

Preceding the index will be found a table of the Session Laws of 1915, 1916, and 1917, showing the sections of this compilation in which the various acts will be found. An exhaustive index has been prepared by the editorial staff of the publishers.

F. B. T.

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GENERAL STATUTES OF MINNESOTA

SUPPLEMENT 1917

PART I

JURISDICTION, DIVISIONS, CIVIL POLITY, AND INTERNAL ADMINISTRATION

CHAPTER 2

TERRITORIAL DIVISIONS

COUNTIES

SCHEDULE

Aitkin and Crow Wing (1917 c. 135, detaching and annexing lands from and to said counties respectively).

Houston and Winona (1917 c. 116, ceding part of Houston county to state of Wisconsin, to take effect upon cession by Wisconsin of lands in that state which shall be part of Winona county).

LEGISLATIVE DISTRICTS

8. Senate and house—Members—That (for the next legislature and thereafter, until a new apportionment shall have been made) the senate of this state shall be composed of sixty-seven members and the house of representatives shall be composed of one hundred and thirty-one members. ('13 c. 91 § 1, amended '17 c. 217 § 1)

By § 5 the act takes effect January 1, 1918.

9. Boundaries and apportionment—That the representatives in the senate and house of representatives be apportioned throughout the state in sixty-seven senatorial and representative districts, to-wit:

FIRST DISTRICT

The first district shall be composed of the counties of Houston and Fillmore, and shall be entitled to elect one senator and three representatives.

The representative districts shall be divided as follows:

The county of Houston shall constitute one district and shall be entitled to elect one representative.

The county of Fillmore shall constitute one district and shall be entitled to elect one representative.

The counties of Houston and Fillmore shall constitute one district and shall be entitled to elect one representative.

SECOND DISTRICT

The second district shall be composed of the county of Winona and shall be entitled to elect one senator and two representatives.

The representative districts shall be divided as follows:

The city of Winona shall constitute one district and shall be entitled to elect one representative.

The county of Winona (except the city of Winona) shall constitute one district and shall be entitled to elect one representative.

THIRD DISTRICT

The third district shall be composed of the county of Wabasha and shall be entitled to elect one senator and one representative.

FOURTH DISTRICT

The fourth district shall be composed of the county of Olmsted and shall be entitled to elect one senator and one representative.

FIFTH DISTRICT

The fifth district shall be composed of the counties of Dodge and Mower and shall be entitled to elect one senator and two representatives.

The representative districts shall be divided as follows:

The county of Dodge shall constitute one district and shall be entitled to elect one representative.

The county of Mower shall constitute one district and shall be entitled to elect one representative.

SIXTH DISTRICT

The sixth district shall be composed of the county of Freeborn and shall be entitled to elect one senator and one representative.

SEVENTH DISTRICT

The seventh district shall be composed of the county of Faribault and shall be entitled to elect one senator and one representative.

EIGHTH DISTRICT

The eighth district shall be composed of the county of Blue Earth and shall be entitled to elect one senator and two representatives.

The representative districts shall be divided as follows:

The first district shall be composed of the townships of Sterling, Shelby, Pleasant Mound, Ceresco, Vernon, Lincoln, Garden City, Butternut Valley, Judson, Cambria, South Bend, and the fourth, fifth and sixth wards of the city of Mankato and the village of Amboy, Vernon Center, and Lake Crystal shall constitute one district and shall be entitled to elect one representative.

The second district shall be composed of the townships of Mapleton, Danville, Medo, Beauford, Lyra, Rapidan, Decoria, McPherson, Mankato, Le Ray, Lime and Jamestown and the first, second and third wards of the city of Mankato together with the villages of Mapleton, Good Thunder, St. Clair, Eagle Lake and Madison Lake shall constitute one district and shall be entitled to elect one representative.

NINTH DISTRICT

The ninth district shall be composed of the counties of Watonwan and Martin and shall be entitled to elect one senator and two representatives.

The representative districts shall be divided as follows:

The county of Watonwan shall constitute one district and shall be entitled to elect one representative.

The county of Martin shall constitute one district and shall be entitled to elect one representative.

TENTH DISTRICT

The tenth district shall be composed of the counties of Cottonwood and Jackson and shall be entitled to elect one senator and two representatives.

The representative district shall be divided as follows:

The county of Cottonwood shall constitute one district and shall be entitled to elect one representative.

The county of Jackson shall constitute one district and shall be entitled to elect one representative.

ELEVENTH DISTRICT

The eleventh district shall be composed of the counties of Nobles and Rock and shall be entitled to elect one senator and two representatives.

The representative districts shall be divided as follows:

The county of Nobles shall constitute one district and shall be entitled to elect one representative.

The county of Rock shall constitute one district and shall be entitled to elect one representative.

TWELFTH DISTRICT

The twelfth district shall be composed of the counties of Lincoln, Pipestone and Murray and shall be entitled to elect one senator and three representatives.

The representative districts shall be divided as follows:

The county of Lincoln shall constitute one district and shall be entitled to elect one representative.

The county of Pipestone shall constitute one district and shall be entitled to elect one representative.

The county of Murray shall constitute one district and shall be entitled to elect one representative.

THIRTEENTH DISTRICT

The thirteenth district shall be composed of the counties of Lyon and Yellow Medicine and shall be entitled to elect one senator and two representatives.

The representative districts shall be divided as follows:

The county of Lyon shall constitute one district and shall be entitled to elect one representative.

The county of Yellow Medicine shall constitute one district and shall be entitled to elect one representative.

FOURTEENTH DISTRICT

The fourteenth district shall be composed of the counties of Redwood and Brown and shall be entitled to elect one senator and three representatives.

The representative districts shall be divided as follows:

The county of Redwood shall constitute one district and shall be entitled to elect one representative.

The county of Brown shall constitute one district and shall be entitled to elect one representative.

The counties of Redwood and Brown shall constitute one district and shall be entitled to elect one representative.

FIFTEENTH DISTRICT

The fifteenth district shall be composed of the counties of Nicollet and Sibley and shall be entitled to elect one senator and two representatives.

The representative districts shall be divided as follows:

The county of Nicollet shall constitute one district and be entitled to elect one representative.

The county of Sibley shall constitute one district and shall be entitled to elect one representative.

SIXTEENTH DISTRICT

The sixteenth district shall be composed of the counties of Waseca and Steele and shall be entitled to elect one senator and two representatives.

The representative district shall be divided as follows:

The county of Waseca shall constitute one district and shall be entitled to elect one representative.

The county of Steele shall constitute one district and shall be entitled to elect one representative.

SEVENTEENTH DISTRICT

The seventeenth district shall be composed of the county of Le Sueur and shall be entitled to elect one senator and one representative.

EIGHTEENTH DISTRICT

The eighteenth district shall be composed of the county of Rice and shall be entitled to elect one senator and one representative.

NINETEENTH DISTRICT

The nineteenth district shall be composed of the county of Goodhue and shall be entitled to elect one senator and two representatives.

The representative districts shall be divided as follows:

The first district shall be composed of the townships and villages lying south of township line No. 112, shall constitute one district and shall be entitled to elect one representative.

The second district shall be composed of the townships, cities and villages [in] said Goodhue county, lying north of south line of township line No. 112, shall constitute one district and shall be entitled to elect one representative.

TWENTIETH DISTRICT

The twentieth district shall be composed of the county of Dakota and shall be entitled to elect one senator and one representative.

TWENTY-FIRST DISTRICT

The twenty-first district shall be composed of the counties of Carver and Scott and shall be entitled to elect one senator and two representatives.

The representative districts shall be divided as follows:

The county of Carver shall constitute one district and shall be entitled to elect one representative.

The county of Scott shall constitute one district and shall be entitled to elect one representative.

TWENTY-SECOND DISTRICT

The twenty-second district shall be composed of the county of McLeod and shall be entitled to elect one senator and one representative.

TWENTY-THIRD DISTRICT

The twenty-third district shall be composed of the county of Renville and shall be entitled to elect one senator and one representative.

TWENTY-FOURTH DISTRICT

The twenty-fourth district shall be composed of the counties of Lac qui Parle and Chippewa and shall be entitled to elect one senator and two representatives.

The representative districts shall be divided as follows:

The county of Lac qui Parle shall constitute one district and shall be entitled to elect one representative.

The county of Chippewa shall constitute one district and shall be entitled to elect one representative.

TWENTY-FIFTH DISTRICT

The twenty-fifth district shall be composed of the counties of Swift and Kandiyohi and shall be entitled to elect one senator and two representatives.

The representative districts shall be divided as follows:

The county of Swift shall constitute one district and shall be entitled to elect one representative.

The county of Kandiyohi shall constitute one district and shall be entitled to elect one representative.

TWENTY-SIXTH DISTRICT

The twenty-sixth district shall be composed of the county of Meeker and shall be entitled to elect one senator and one representative.

TWENTY-SEVENTH DISTRICT

The twenty-seventh district shall be composed of the county of Wright and shall be entitled to elect one senator and two representatives.

TWENTY-EIGHTH DISTRICT

The twenty-eighth district shall be composed of the first ward, and the first precinct of the tenth ward and the first, second, third and fourth precincts of the third ward and the fourth and fifth precincts of the ninth ward of the city of Minneapolis and shall be entitled to elect one senator and two representatives.

TWENTY-NINTH DISTRICT

The twenty-ninth district shall be composed of the second ward and the first, second, third, sixth, seventh, eighth and ninth precincts of the ninth ward of the city of Minneapolis and the town of St. Anthony in the county of Hennepin and shall be entitled to elect one senator and two representatives.

THIRTIETH DISTRICT

The thirtieth district shall be composed of the fourth ward of the city of Minneapolis and shall be entitled to elect one senator and two representatives.

THIRTY-FIRST DISTRICT

The thirty-first district shall be composed of the fifth and sixth wards of the city of Minneapolis and shall be entitled to elect one senator and two representatives.

THIRTY-SECOND DISTRICT

The thirty-second district shall be composed of the eleventh and twelfth wards of the city of Minneapolis and shall be entitled to elect one senator and two representatives.

THIRTY-THIRD DISTRICT

The thirty-third district shall be composed of the seventh and thirteenth wards of the city of Minneapolis and shall be entitled to elect one senator and two representatives.

THIRTY-FOURTH DISTRICT

The thirty-fourth district shall be composed of the eighth ward of the city of Minneapolis and shall be entitled to elect one senator and two representatives.

THIRTY-FIFTH DISTRICT

The thirty-fifth district shall be composed of the fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth and thirteenth precincts of the third ward and the second, third, fourth, fifth, sixth and seventh precincts of the tenth ward, of the city of Minneapolis, and shall be entitled to one senator and two representatives.

THIRTY-SIXTH DISTRICT

The thirty-sixth district shall be composed of the county of Hennepin, outside of the city of Minneapolis, except the town of St. Anthony, and shall be entitled to elect one senator and two representatives.

The representative districts shall be divided as follows:

The villages of Dayton, Golden Valley, Hanover, Osseo and Robbinsdale, and the towns of Brooklyn, Champlin, Corcoran, Crystal Lake, Dayton, Greenwood, Hassan, Maple Grove, Medina and Plymouth shall constitute one district and shall be entitled to elect one representative.

The villages of Deephaven, Edina, Excelsior, Long Lake, Minnetonka Beach, St. Bonifacius, Richfield, St. Louis Park, Tonka Bay, Wayzata and West Minneapolis, and the towns of Bloomington, Eden Prairie, Excelsior, Independence, Minnetonka, Minnetrista and Orono shall constitute one district and shall be entitled to elect one representative.

THIRTY-SEVENTH DISTRICT

The thirty-seventh district shall be composed of the first ward and the first, second, third, fourth, fifth, sixth, seventh, twelfth and thirteenth precincts of the ninth ward of the city of St. Paul and shall be entitled to elect one senator and two representatives.

The representative districts shall be divided as follows:

The first, second, third and fourth precincts of the first ward and the first, second, third, fourth, fifth, sixth, seventh, twelfth and thirteenth precincts of the ninth ward shall constitute one district and shall be entitled to elect one representative.

The fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth and thirteenth precincts of the first ward shall constitute one district and shall be entitled to elect one representative.

THIRTY-EIGHTH DISTRICT

The thirty-eighth district shall be composed of the eighth ward and the tenth and eleventh precincts of the ninth ward and the third, fourth, and fifth precincts of the twelfth ward in the city of St. Paul, and shall be entitled to elect one senator and two representatives.

The representative districts shall be divided as follows:

The sixth, seventh, ninth, tenth, eleventh, twelfth and thirteenth precincts of the eighth ward and the eighth, ninth, tenth and eleventh precincts of the ninth ward shall constitute one district and shall be entitled to elect one representative.

The first, second, third, fourth, fifth, eighth and fourteenth precincts of the eighth ward and the third, fourth and fifth precincts of the twelfth ward shall constitute one district and shall be entitled to elect one representative.

Precincts 8 and 9 of the ninth ward of the city of St. Paul are expressly placed in the first representative district of the thirty-eighth senatorial district, and are therefore necessarily within and a part of that senatorial district (125-336, 147+105). States, §27.

THIRTY-NINTH DISTRICT

The thirty-ninth district shall be composed of the fifth and sixth wards of the city of St. Paul and shall be entitled to elect one senator and two representatives.

The representative districts shall be divided as follows:

The fifth ward of the city of St. Paul shall constitute one district and shall be entitled to elect one representative.

The sixth ward of the city of St. Paul shall constitute one district and shall be entitled to elect one representative.

FORTIETH DISTRICT

The fortieth district shall be composed of the fourth and seventh wards of the city of St. Paul and shall be entitled to elect one senator and two representatives.

The representative districts shall be divided as follows:

The fourth Ward shall constitute one district and shall be entitled to elect one representative.

The seventh ward shall constitute one district and shall be entitled to elect one representative.

FORTY-FIRST DISTRICT

The forty-first district shall be composed of the second and third wards of the city of St. Paul and all of Ramsey county outside of the city of St. Paul lying east of Rice street, produced north to the north county line of Ramsey county and shall be entitled to elect one senator and two representatives.

FORTY-SECOND DISTRICT

The forty-second district shall be composed of the tenth and eleventh wards, and the first, second and sixth precincts of the twelfth ward of the city of St. Paul and all of Ramsey county outside of the city of St. Paul lying west of Rice street, produced north to the north county line of Ramsey county and shall be entitled to elect one senator and two representatives.

The representative districts shall be divided as follows:

The eleventh ward and the first and second precincts of the twelfth ward shall constitute one district and shall be entitled to elect one representative.

The tenth ward and the sixth precinct of the twelfth ward and all of Ramsey county outside of the city of St. Paul lying west of Rice street, produced north to the north county line of Ramsey county shall constitute one district and shall be entitled to elect one representative.

FORTY-THIRD DISTRICT

The forty-third district shall be composed of the county of Washington and shall be entitled to elect one senator and two representatives.

FORTY-FOURTH DISTRICT

The forty-fourth district shall be composed of the counties of Anoka and Isanti and shall be entitled to elect one senator and one representative.

FORTY-FIFTH DISTRICT

The forty-fifth district shall be composed of the county of Benton, the seventh ward of the city of St. Cloud, situated in the county of Sherburne and the city of St. Cloud and the villages of St. Joseph, Rockville, Sartell and Waite Park, and the towns of St. Joseph, Brockway, St. Wendel, Le Sauk, Rockville, St. Cloud, St. Augusta and Lynden situated in the county of Stearns and shall be entitled to elect one senator and two representatives.

The representative districts shall be divided as follows:

The county of Benton and the seventh ward of the city of St. Cloud in Sherburne county shall constitute one district and shall be entitled to elect one representative.

The first, second, third and fourth wards of the city of St. Cloud and the villages of St. Joseph, Sartell, Rockville and Waite Park and the towns of Brockway, St. Wendel, LeSauk, St. Joseph, St. Cloud, St. Augusta, Rockville and Lynden situated in the county of Stearns shall constitute one district and shall be entitled to elect one representative.

FORTY-SIXTH DISTRICT

The forty-sixth district shall be composed of the villages of Holding, Freeport, Albany, Eden Valley, St. Martin, Cold Spring, Richmond, Kimball, Prairie, Avon, New Munich, Meire Grove, Brooten, Belgrade, Paynesville and Spring Hill and the towns of Holding, Millwood, Oak, St. Martin, Krain, Albany, Farming, Munson, Eden Lake, Avon, Collegeville, Wakefield, Luxemburg, Maine Prairie, Fair Haven, Ashley, Sauk Center, Melrose, Raymond, Getty, Grove, North Fork, Lake George, Spring Hill, Crow Lake, Crow River, Lake Henry, Zion and Paynesville and the cities of Sauk Center and Melrose situated in the county of Stearns and shall be entitled to elect one senator and two representatives.

The representative districts shall be divided as follows:

The villages of Meire Grove, Brooten, Belgrade, Paynesville and Spring Hill, the towns of Ashley, Sauk Center, Melrose, Raymond, Getty, Grove, North Fork, Lake George, Spring Hill, Crow Lake, Crow River, Lake Henry, Zion and Paynesville and the cities of Sauk Center and Melrose shall constitute one district and shall be entitled to elect one representative.

The villages of Holding, Freeport, Albany, Eden Valley, St. Martin, Cold Spring, Richmond, Kimball, Prairie, Avon, New Munich and the towns of Holding, Millwood, Oak, St. Martin, Krain, Albany, Farming, Munson, Eden Lake, Avon, Collegeville, Wakefield, Luxemburg, Maine Prairie and Fair Haven shall constitute one district and shall be entitled to elect one representative.

FORTY-SEVENTH DISTRICT

The forty-seventh district shall be composed of the counties of Douglas and Pope and shall be entitled to elect one senator and two representatives.

The representative districts shall be divided as follows:

The county of Douglas shall constitute one district and shall be entitled to elect one representative.

The county of Pope shall constitute one district and shall be entitled to elect one representative.

FORTY-EIGHTH DISTRICT

The forty-eighth district shall be composed of the counties of Grant, Stevens, Traverse and Big Stone and shall be entitled to elect one senator and four representatives.

The representative districts shall be divided as follows:

The county of Grant shall constitute one district and shall be entitled to elect one representative.

The county of Stevens shall constitute one district and shall be entitled to elect one representative.

The county of Traverse shall constitute one district and shall be entitled to elect one representative.

The county of Big Stone shall constitute one district and shall be entitled to elect one representative.

FORTY-NINTH DISTRICT

The forty-ninth district shall be composed of the counties of Clay and Wilkin and shall be entitled to elect one senator and two representatives.

The representative districts shall be divided as follows:

The county of Clay shall constitute one district and shall be entitled to elect one representative.

The county of Wilkin shall constitute one district and shall be entitled to elect one representative.

FIFTIETH DISTRICT

The fiftieth district shall be composed of the county of Otter Tail and shall be entitled to elect one senator and four representatives.

FIFTY-FIRST DISTRICT

The fifty-first district shall be composed of the counties of Wadena and Todd and shall be entitled to elect one senator and two representatives.

The representative districts shall be divided as follows:

The county of Wadena shall constitute one district and shall be entitled to elect one representative.

The county of Todd shall constitute one district and shall be entitled to elect one representative.

FIFTY-SECOND DISTRICT

The fifty-second district shall be composed of the counties of Itasca and Cass and shall be entitled to elect one senator and two representatives.

The representative districts shall be divided as follows:

The county of Itasca shall constitute one district and shall be entitled to elect one representative.

The county of Cass shall constitute one district and shall be entitled to elect one representative.

FIFTY-THIRD DISTRICT

The fifty-third district shall be composed of the counties of Crow Wing and Morrison, and shall be entitled to elect one senator and three representatives.

The representative districts shall be divided as follows:

The county of Morrison shall constitute one district and shall be entitled to elect one representative.

The county of Crow Wing shall constitute one district and shall be entitled to elect one representative.

The counties of Crow Wing and Morrison shall constitute one district and shall be entitled to elect one representative.

FIFTY-FOURTH DISTRICT

The fifty-fourth district shall be composed of the counties of Aitkin and Carlton and shall be entitled to elect one senator and two representatives.

The representative districts shall be divided as follows:

The county of Aitkin shall constitute one district and shall be entitled to elect one representative.

The county of Carlton shall constitute one district and shall be entitled to elect one representative.

FIFTY-FIFTH DISTRICT

The fifty-fifth district shall be composed of the counties of Mille Lacs, Kanabec and Sherburne and shall be entitled to elect one senator and two representatives.

FIFTY-SIXTH DISTRICT

The fifty-sixth district shall be composed of the counties of Pine and Chisago and shall be entitled to elect one Senator and two representatives.

FIFTY-SEVENTH DISTRICT

The fifty-seventh district shall be composed of the first and second wards of the city of Duluth and all the territory in St. Louis county east of the range line between ranges thirteen and fourteen west; and south of the township line between townships fifty-six and fifty-seven north and the counties of Lake and Cook; and shall be entitled to elect one senator and two representatives.

The representative districts shall be divided as follows:

The first and second wards of the city of Duluth and all of the territory in St. Louis county east of the range line between ranges thirteen and fourteen west; and north to the township line between townships fifty-six and fifty-seven north shall constitute one district and shall be entitled to elect one representative.

The counties of Lake and Cook shall constitute one district and shall be entitled to elect one representative.

FIFTY-EIGHTH DISTRICT

The fifty-eighth district shall be composed of the third, fourth, fifth and sixth wards of the city of Duluth and all of the territory in St. Louis county located north of the township line between townships fifty and fifty-one; south of the township line between townships fifty-six and fifty-seven and between the range line between ranges thirteen and fourteen and the range line between ranges fifteen and sixteen and shall be entitled to elect one senator and two representatives.

FIFTY-NINTH DISTRICT

The fifty-ninth district shall be composed of the seventh and eighth wards of the city of Duluth and all of that part of St. Louis county not heretofore described lying south of the township line between townships fifty-six and fifty-seven and shall be entitled to elect one senator and two representatives.

SIXTIETH DISTRICT

The sixtieth district shall be composed of all of the part of St. Louis county lying north of the township line between townships fifty-six and fifty-seven and west of the range line between ranges seventeen and eighteen and shall be entitled to elect one senator and two representatives.

SIXTY-FIRST DISTRICT

The sixty-first district shall be composed of all of that part of St. Louis county lying north of the township line between townships fifty-six and fifty-seven and east of the range line between ranges seventeen and eighteen and shall be entitled to elect one senator and two representatives.

SIXTY-SECOND DISTRICT

The sixty-second district shall be composed of the counties of Beltrami and Koochiching and shall be entitled to elect one senator and two representatives. The representative districts shall be divided as follows:

The county of Beltrami shall constitute one district and shall be entitled to elect one representative.

The county of Koochiching shall constitute one district and shall be entitled to elect one representative.

SIXTY-THIRD DISTRICT

The sixty-third district shall be composed of the counties of Becker and Hubbard and shall be entitled to elect one senator and two representatives. The representative districts shall be divided as follows:

The county of Becker shall constitute one district and shall be entitled to elect one representative.

The county of Hubbard shall constitute one district and shall be entitled to elect one representative.

SIXTY-FOURTH DISTRICT

The sixty-fourth district shall be composed of the counties of Norman and Mahnomen and shall be entitled to elect one senator and one representative.

SIXTY-FIFTH DISTRICT

The sixty-fifth district shall be composed of the counties of Pennington, Red Lake and Clearwater and shall be entitled to elect one senator and two representatives.

SIXTY-SIXTH DISTRICT

The sixty-sixth district shall be composed of the county of Polk and shall be entitled to elect one senator and two representatives.

SIXTY-SEVENTH DISTRICT

The sixty-seventh district shall be composed of the counties of Kittson, Roseau and Marshall and shall be entitled to elect one senator and three representatives.

The representative districts shall be divided as follows:

The county of Kittson shall constitute one district and shall be entitled to elect one representative.

The county of Roseau shall constitute one district and shall be entitled to elect one representative.

The county of Marshall shall constitute one district and shall be entitled to elect one representative. ('13 c. 91 § 2, amended '17 c. 217 § 2)

By § 4 inconsistent acts are repealed. See 1915 c. 11, relating to fifty-sixth district. 125-336, 147+105.

[9—]1. **Changes of county or township lines**—That in the event of any change in the county or township lines affecting the districts provided in section 2 [9] of this act, the senatorial and representative districts shall not be affected thereby. ('17 c. 217 § 3)

10. **Changes of county or township lines**—

This section is superseded by § [9—]1.

CHAPTER 3

THE LEGISLATURE

Laws 1851 c. 3, cited (125-194, 145+967).

38. **Contempts**—

Cited (131-116, 154+750).

39. **Same—Punishment**—

Cited (131-116, 154+750).

41. **Journals**—

The only authorized journal of the house is the printed daily journal, where the house, on each day, approves the proceedings of the preceding day as shown by the "journal * * * as printed," and hence such journal will prevail over the permanent journal, though both journals are made evidence of the legislative proceedings by § 8414 (130-424, 153+749). Statutes, 285, 286.

STANDING APPROPRIATIONS

48. **"Standing appropriation" defined**—

This act abolished a standing appropriation of hunters' license fees to the use of the Game and Fish Commission. Such fees were never "set apart in a special fund," so as to be excepted from the operation of the act (126-110, 147+946). States, 132.

49. **Standing appropriations repealed—Exceptions**—

126-110, 147+946; note under § 48.

CHAPTER 4

EXECUTIVE DEPARTMENT

THE GOVERNOR

57. Proclamations—Extra sessions—Thanksgiving, etc.—

Thanksgiving Day is not made a legal holiday by this section, so that time for appeal expiring on that day cannot be perfected the succeeding day (129-522, 151+273). Time, ~~6~~10(1, 2).

STATE AUDITOR

67. Claims audited—Warrants—Records—Every demand directed by law to be paid out of the state treasury shall first be examined and adjusted by the auditor. If there be sufficient money in the treasury appropriated to its payment and not otherwise, he shall issue his warrant on the treasurer for the amount found to be justly due. Warrants shall be drawn on printed blanks progressively numbered, and for every warrant issued, the number, amount, date and name of payee shall be entered in progressive order in books kept by him for that purpose. (Amended '17 c. 480 § 1)

Section 5 repeals inconsistent acts, etc.

By § 6 the act takes effect August 1, 1917.

[67—]1. Same—Approval of claims—Vouchers—Whenever claims against the state for any purposes are made for which there is an appropriation available, the official having authority over that appropriation from which the same is to be paid, shall cause the claim to be approved by some individual having knowledge that the service was performed, or the goods or material furnished, and shall have voucher made giving the name and address of person, firm or corporation to whom the money is due, the date and nature of the claim, reference to the appropriation from which the same is to be paid. Departments and institutions shall forward such claims to the state auditor accompanied by transmittal form prescribed by him. ('05 c. 96, amended '09 c. 120; '17 c. 480 § 2)

[67—]2. Same—Voucher—Warrants—The form of the claim shall be such as is prescribed by the state auditor and shall be a voucher-warrant. The warrant to be filled in and signed by the auditor pursuant to the provisions of this act, and the treasurer upon approval of the claim by the auditor, shall accept such warrant with his signature, making such voucher-warrant negotiable. The treasurer may confer authority upon one or more of his assistants to accept such warrant in his behalf. The voucher side of the voucher-warrant shall bear the date of the invoice it represents. The warrant side shall bear the date of the issuance of the warrant, and be entered on the warrant record the same as a cash payment. ('05 c. 96, amended '09 c. 120; '17 c. 480 § 3)

[67—]3. Same—Endorsement—The endorsement by the payee of the voucher-warrant shall constitute a receipt in full for the claim therein. ('05 c. 96, amended '09 c. 120; '17 c. 480 § 4)

[67—]4. State officers and employes to be paid on only one voucher—**Exceptions**—No officer or employé of the state of Minnesota, or of the University, or of any state institution or state school, shall be paid, upon more than one voucher, payroll or warrant for any stated pay period, nor for any part thereof; and there shall be included in each claim for salary or compensation and upon each voucher or payroll therefor a declaration by the claimant officer or employé to the effect that such claimant has not made and will not make any claim upon the state nor upon any department thereof for services rendered by him in any capacity for the period covered by the voucher, claim or payroll signed by such claimant officer or employé, nor for any of the time covered by such voucher, claim or payroll; provided, that the provi-

sions of this act shall not apply to members of the national guard serving as members of the legislature. Providing that the provisions of this act shall not apply to instructors in any educational institution in the state during vacation period. Provided further, that the provisions of this bill shall not apply to employees or officers of state institutions under the jurisdiction and control of the state board of control. ('17 c. 467 § 1)

By § 4 the act takes effect August 1, 1917.

[67—]5. **Same—Voucher not to be approved unless in proper form**—No voucher, claim or payroll which does not comply with the provisions of section 1 [67—4] hereof shall be approved, audited or allowed by any officer charged with the duty of approving, auditing or allowing such voucher, claim or payroll. ('17 c. 467 § 2)

[67—]6. **Same—Penalty for violation**—Any violation of this act shall be a misdemeanor and shall be ground for impeachment or for removal from office. ('17 c. 467 § 3)

[67—]7. **Accounts to be itemized**—That before any charge, bill or expense account against the state of Minnesota shall be audited, it shall be itemized and verified as to the correctness thereof. ('17 c. 498 § 1)

[67—]8. **Auditor to issue subpoena to verify bill for expenses**—The state auditor is hereby authorized to issue subpoena to any person who has or shall hereafter render an account to the state, be the same in the nature of a bill for expenses for articles sold or purchased, or involving any other transaction between the state of Minnesota and any person, corporation or co-partnership; and he shall have the power to place any such individual under oath and to examine the said person or individual as to the correctness of any account rendered and the state auditor is further empowered to subpoena such witnesses, to administer oath and to examine them under oath in any transaction entered into between the state of Minnesota and any person, co-partnership or corporation. ('17 c. 498 § 2)

STATE TREASURER

[90—]1. **Treasurer to collect drafts—Duty of attorney general**—The state treasurer shall make collection upon all drafts of the state auditor placed in his hands. Uncollected drafts now in the office of the attorney general shall be delivered to the treasurer and a receipt taken therefor. The treasurer may whenever in his discretion he shall deem it advisable, require the assistance of the attorney general to facilitate the collection of such drafts, who may institute suit in the name of the state to enforce the collection of the same. ('17 c. 398 § 1)

[90—]2. **Drafts to be registered**—All drafts shall be registered by the treasurer upon their receipt in a book to be a permanent record, and proper notations made as to subsequent proceedings in connection with the collection thereof. ('17 c. 398 § 2)

[90—]3. **Partial payments**—Partial payments upon drafts may be accepted by the treasurer and a receipt for such partial payment shall be issued therefor, but no such partial payment shall operate as a compromise of the claim covered by such draft, and the unpaid portion thereof shall remain a claim of the state as fully as if no partial payment had been made. ('17 c. 398 § 3)

BOARDS OF AUDIT AND DEPOSIT

94. **Limit of deposit**—The amount on deposit at any time with any state depository shall not exceed the amount designated by the board of deposit. In case a personal surety bond be given by a depository the board may fix a limit of deposit which shall not exceed one-half the penalty named in such bond. If a corporate surety bond be given by such depository, the board may fix a limit of deposit equal to the penalty named in such surety bond. Provided, however, that the board shall in no case fix a limit of deposit which shall exceed one-half the paid-up capital stock or capital claimed by such de-

pository, except that in active or checking account banks the limit of deposit may be fifty per cent. of the paid-up capital stock and permanent surplus. Any financial institution doing a general banking business, and which receives deposits subject to withdrawals on demand, may be designated as a state depository. (Amended '17 c. 396 § 1)

ATTORNEY GENERAL

101. Deputy and assistants—Stenographers—Records—Opinions—The attorney general may appoint, and at his pleasure remove, one deputy attorney general and six assistant attorneys general who shall render such aid as he may require of them in the discharge of his official duty. He shall keep a record of his official correspondence and of all matters placed in his hands by the governor, auditor, secretary of state or treasurer, or any officer or board in charge of any of the business of the state upon which any official action is necessary; he shall also keep a record of all legal proceedings instituted by him or in which he appears, and of the several steps taken therein. All official opinions shall be in writing and copies thereof made and filed in his office. The deputy attorney general and each of said assistants shall, to the extent authorized in writing by the attorney general, have authority to appear before grand juries or in any court of this state, as the attorney general himself might do.

The attorney general shall have power to employ such assistance, whether lay, legal, or expert, as he may deem necessary for the protection of the interests of the state through the proper conduct of its legal business. (Amended '17 c. 61 § 1)

1917 c. 61 § 2 makes an appropriation for the remainder of the fiscal year.

[101—]1. Salaries of deputy and assistant—The salary of the assistant attorney general shall be four thousand two hundred dollars (\$4,200) and of the deputy attorney general four thousand five hundred dollars (\$4,500) a year. ('17 c. 61 § 3)

GENERAL PROVISIONS

111. [Repealed.]

See note under § [111—]1.

License fees collected by the state board of medical examiners belong to the members of the board, and need not be accounted for under this section (124-151, 144+755). Physicians and Surgeons, §5(1).

[111—]1. Fees and receipts to be paid into treasury—All fees and other receipts of the several officers, boards and departments of the state and which is the property of the state shall be paid into the state treasury daily, unless such receipts are under \$50.00, in which event payment may be deferred until they aggregate such sum. The several state institutions shall make payments under this act on the first business day of each week; provided, that the provisions of this act shall not apply to the state agricultural society. Not later than the fifth of each month such officer, board, department or institution shall render to the state auditor an account for the preceding month of all moneys so received and paid over, specifying the items and sources thereof in detail. ('17 c. 462 § 1)

By § 2, section 111, General Statutes 1913, and all other inconsistent acts are repealed.

[ESTIMATES AND BUDGET]

[117—]1. "Estimate" and "budget" defined—The word "estimate" as used in this title shall mean a statement showing:

1. The expenditure for the purposes specified during each year of the current biennial period.
2. The funds available or appropriations authorized for the same purpose, during each year of the current biennial period.
3. The amounts needed during each year of the ensuing biennial period for the work, and for the other disbursements of any department bureau,

board, institution, office or branch of the state government, including purchases of land and permanent improvements.

4. The anticipated funds or revenues available for such purposes and the anticipated receipts in connection with such work.

5. Such other information as may be required by law or by executive order.

The word "budget" shall mean the complete estimates for the entire state government, including a summary thereof and a schedule of appropriations required and of estimated tax levies to correspond therewith. ('15 c. 356 § 1)

[117—]2. **Estimates, by whom prepared**—Every officer, board, commission or institution of this state, under whose direction any public money is to be expended shall prepare an estimate at such time and in such form as may be required by law or executive order. ('15 c. 356 § 2)

[117—]3. **Estimates, to whom submitted**—Every estimate so prepared shall be submitted to the governor; provided that the estimates of subordinate officers or boards shall be submitted to the superior officer or board under whose direction the official making such estimate is directly acting. ('15 c. 356 § 3)

[117—]4. **Estimates to be revised—Submission to governor**—It shall be the duty of every officer and of the members of every board to whom any such estimates are submitted, to assemble the same, and in consultation with the subordinate officers or boards submitting them, to revise such estimates before they are finally submitted to the governor, which shall be done not later than the first day of December in each year immediately preceding the regular session of the legislature. ('15 c. 356 § 4)

[117—]5. **Duties of governor—Budget**—It shall be the duty of the governor, not later than December 31st immediately preceding each regular session of the legislature, to assemble all estimates so prepared and in consultation with the chief executive officers to make final revision of such estimates, having in view the total expenditures, total revenues and the tax levy, and to that end he shall include the estimated expenditures for the judiciary, the legislature, the state university and the state militia. He shall thereupon prepare the "budget" and shall cause to be printed in a form convenient for the legislature, a sufficient number of copies thereof to supply at least one copy to each member of the legislature and to the chief executive officers of the state, and shall lay it before each branch of the legislature not later than the first day of February. ('15 c. 356 § 5)

[117—]6. **Form of estimates**—Every estimate shall be in such form as required by law or as the governor may by executive order direct. All estimates shall be as nearly as practicable of a similar form. ('15 c. 356 § 6)

[117—]7. **Contents of estimates**—Every estimate shall present the following information and such other information as may be required by law or as the governor may direct:

1. It shall show in parallel columns:

Name of item.

Citation to statutes authorizing the service or fixing particular items.

Appropriations for each year of the current biennial period.

The actual expenditures and anticipated expenditures during each year of the biennium.

Amounts needed for each year of the coming biennium.

Explanations of increases or decreases.

Estimated revenue or receipts in connection with each service.

2. It shall distinguish each line of work or activity and shall distinguish at least the following classes of expenditures: (1) Salaries; (2) Permanent improvements and equipment; (3) All other expenses. ('15 c. 356 § 7)

[117—]8. **Allotment of appropriations**—It shall be the duty of each disbursing officer or board within thirty days after the passage of any appropriation by the state legislature to allot within each appropriation to be

expended under his or its direction, the amounts if any, for the several purposes set forth in the "budget" submitted to the legislature, not inconsistent with the terms of the appropriation act. Subject to the restrictions of the appropriation act allotments may, in case of necessity, be altered by the officer or board charged with the disbursement thereof. All such allotments and any changes thereof shall, as soon as made, be filed with the state auditor. ('15 c. 356 § 8)

[117—]9. **Accounting**—A debit and credit account of every allotment shall be kept by the auditor and by the officer or board concerned and no expenditure shall be made in excess of the balance available therein. ('15 c. 356 § 9)

[MINNESOTA COMMISSION OF PUBLIC SAFETY]

[117—]10. **Commission, how constituted**—There is hereby created a commission consisting of seven (7) members, to be known as the Minnesota commission of public safety. The governor and attorney general shall be ex-officio members of such commission and the governor shall be chairman thereof, and the other members shall be citizens of the state and shall be appointed by the governor with the advice and consent of the senate, if in session, and if not in session, the confirmation thereof to be as soon thereafter as the senate shall be convened, and such appointees shall hold office during the pleasure of the governor. ('17 c. 261 § 1)

[117—]11. **Vice-chairman—By-laws—Agents—Official acts**—Such commission shall elect one of its members vice-chairman and he shall perform the duties of the chairman as such during the absence or inability of the chairman to act. Such commission shall have power to adopt by-laws for its government and the convenient transaction of its business, to change such by-laws from time to time and to provide for the discharge of the duties of such commission by subordinate officers, agents, sub-committees and otherwise, and to prescribe the duties of all such subordinate officers, agents, subcommittees and employes. All official acts of the commission shall require a majority vote of the entire commission. ('17 c. 261 § 2)

[117—]12. **Powers of commission—May acquire property—Co-operation with United States government—Examination of persons—Removal of officials other than constitutional officers**—In the event of war existing between the United States and any foreign nation, such commission shall have power to do all acts and things non-inconsistent with the constitution or laws of the state of Minnesota or of the United States, which are necessary or proper for the public safety and for the protection of life and public property or private property of a character as in the judgment of the commission requires protection, and shall do and perform all acts and things necessary or proper so that the military, civil and industrial resources of the state may be most efficiently applied toward maintenance of the defense of the state and nation and toward the successful prosecution of such war, and to that end it shall have all necessary power not herein specifically enumerated and in addition thereto the following specific powers:

1. Said commission may purchase, lease, hire or otherwise acquire any and all property of every kind and nature in its judgment necessary or desirable for use for any of the purposes aforesaid.

2. It may seize, condemn and appropriate all such property for any of the uses aforesaid, and provide for determining the value of such property and of making proper payment therefor.

3. Said commission shall have power and it shall be the duty of said commission to co-operate with the military and other officers and agents of the United States government in all matters pertaining to the duties and functions of such commission and shall aid the government of the United States in the prosecution of any such war and in relation to public safety so far as possible.

4. Said commission may require any person to appear before it or before any agent or officer of such commission for examination and may examine any such person under oath as to any information within the knowledge of such person and to require such person to produce for inspection any writings or documents under his control, and to that end the district court of any county in the state shall issue a subpoena upon the request of any of its agents or officers, and all said agents and officers shall have power to administer oaths and take testimony and to procure the punishment for contempt of any person refusing to answer or produce writings or documents requested by such commission, by any such district court.

5. Said commission may inquire into the method of performance of his duty by any public official other than the constitutional officials of this state, and may advise the governor to remove any such official from office, if in the judgment of the commission the public interests demand such removal. Upon being advised to remove any such official by said commission, the governor is hereby authorized summarily to remove such public official. ('17 c. 261 § 3)

Authority of Commission upheld—In *Cook v. Burnquist* (D. C.) 242 Fed. 321, it was held that this section was constitutional and valid, and that the statute could not be attacked as delegating legislative power to the Commission. It was also held that the statute gave the Commission authority to require city councils, etc., to enact necessary ordinances to close saloons at ten p. m.; that the authority given the Commission to do all things not inconsistent with the laws of the state meant not inconsistent with the broad purposes or underlying principles and fundamental requirements of such laws.

[117—]13. **To provide for comfort of persons in military and naval service and of dependents**—Said commission shall have power, in addition to the powers hereinbefore granted, to provide for the comfort of any persons in the military service of the United States or of the state of Minnesota who shall enlist in any such war or who, at the time of the commencement thereof, shall be residents of the state of Minnesota, and in addition thereto shall also have power to provide and pay for the support and maintenance of any person or persons dependent for support upon any soldier in the military service of the state of Minnesota, or of the United States, while such soldier is in such service, and shall have power to expend such sums as it may deem necessary for the relief of any such soldier or any person dependent upon him, and shall make proper rules and regulations concerning the same. Said commission shall also have power to provide for any comforts, clothing or other aid for any person in service of the United States government on the battleship Minnesota during the continuance of any such war. ('17 c. 261 § 4)

[117—]14. **Payment to Minnesota national guard for service on Mexican border**—Said commission shall pay to each enlisted member of the national guard of the state of Minnesota who honorably served in the Minnesota military organizations on the Mexican border service pursuant to the call of the president of the United States made June 18, 1916, in addition to the pay received by him from the federal government, the sum of fifty (50) cents per day for each day of such service of such enlisted man after being mustered into federal service, such payment to be made upon duly signed and receipted pay rolls to be prepared by the commander of the company, battery or detachment of which such men were members, blanks therefor to be furnished by the adjutant general; said pay rolls to be checked and approved by such adjutant general. Such payment to be made upon the state auditor's warrant drawn upon the state treasurer as soon as practicable after the muster out from the United States service of any member entitled to such pay. ('17 c. 261 § 5)

[117—]15. **Payment from mobilization until mustered into service of United States**—Said commission is also authorized to pay all members of the national guard of Minnesota for service from the time said guard was mobilized pursuant to the order of the United States government for service on the Mexican border until the time the members of such guard were actually mustered into the service of the United States upon pay rolls showing such

service, properly certified to by the adjutant general of the state of Minnesota, and all sums so paid, which shall hereafter be refunded to the state of Minnesota by the United States government, shall, when received by the state treasurer, be credited to the appropriation herein provided for said commission and shall be used for any of the purposes provided for in this act. ('17 c. 261 § 6)

[117—]16. Enlistment, organization and maintenance of home guard—Said commission is hereby authorized to do all acts and things necessary to provide for the enlistment, organization and maintenance of a home guard for service in the state of Minnesota, to consist of such numbers and units of organization and officers as may be prescribed by said commission, and said commission may secure proper arms and equipment for said guard from the United States government or otherwise, and shall have full power in all things to provide for the organization, equipment, subsistence and maintenance thereof, and said home guard may receive pay and allowances not in excess of that prescribed for the national guard or volunteers in federal service. All of the officers of said guard shall be appointed by the governor, who shall have the same powers in relation to said guard as now conferred upon him by the constitution and laws of the state in relation to the other military and naval forces thereof. ('17 c. 261 § 7)

[117—]17. Duration and termination of powers—When peace shall be concluded between the United States and any and all foreign nations with which the United States is now or hereafter may be at war, the commission shall proceed, as soon as practicable, to close up all of its affairs and upon termination thereof shall make report to the governor of its acts and expenditures, and the powers and duties of such commission shall terminate and cease within three (3) months after the conclusion of peace and shall sooner terminate if the governor shall determine and proclaim that the exercise of the powers and duties of such commission are no longer necessary for public safety. The governor is also authorized to determine and to proclaim that it is necessary to continue such commission in existence for a longer term than three (3) months after peace and shall, in such case, fix the period of the termination of such commission by proclamation. ('17 c. 261 § 8)

[117—]18. Appropriation—There is hereby appropriated from any money not otherwise appropriated, the sum of one million dollars, to be immediately available, for the purpose of carrying out the provisions of this act, the same to be paid out on the order of said commission as provided in its by-laws. ('17 c. 261 § 9)

[117—]19. Partial invalidity—The provisions of this act are separable and not dependent, and if any provision, section, or part of either, is held unconstitutional, the same shall not affect any other part of this act. ('17 c. 261 § 10)

CHAPTER 5

JUDICIAL DEPARTMENT

SUPREME COURT

121. Power concerning writs and processes—The court shall have power to issue to all courts of inferior jurisdiction and to all corporations and individuals, writs of error, certiorari, mandamus, prohibition, quo warranto and all other writs and processes whether especially provided for by statute or not, that are necessary to the execution of the laws and the furtherance of justice. It shall be always open for the issuance and return of such writs and processes and for the hearing and determination of all matters involved therein and for the entry in its minutes of such orders as may from time to

time be necessary to carry out the power and authority conferred upon it by law, subject to such regulations as it may prescribe. Any justice of the court, either in vacation or in term, may order the writ or process to issue and prescribe as to its service and return. (Amended '17 c. 403 § 1)

Certiorari—Certiorari will lie to review the quasi judicial proceedings of municipal boards only where there is no right of appeal and no other adequate remedy (134-204, 158+977). Certiorari, ¶5(1).

Certiorari lies to review the action of a municipal officer in removing a subordinate, though the removal is arbitrary and without jurisdiction because contrary to the requirements of the city charter (127-155, 149+11). Municipal Corporations, ¶159(6).

Certiorari is the proper remedy to obtain a review of the action of a city council in revoking a liquor license (125-425, 147+820). Intoxicating Liquors, ¶108(10).

Order punishing for criminal contempt, not being appealable, is subject to review on certiorari (128-153, 150+383). Contempt, ¶66(1)

122. General powers—Rules—

Assignments of error—161+213. Appeal and Error, ¶731(2), 732.

Assignments of error in appellant's brief of errors of law occurring at the trial cannot be considered, where the only ground of motion for new trial is that the decision is not justified by the evidence and is contrary to law (161+259). Appeal and Error, ¶302(5).

Stay of proceedings—Limitations—Rule 26. Stay of proceedings postpone running of 20-day period for entry of judgment (121-370, 141+485). Costs, ¶238(1).

Record and points and authorities—Where no record and no points or authorities have been served, and no excuse for failure to serve them has been presented, appellee is entitled to affirmance under rule 12 (134-464, 157+327). Appeal and Error, ¶633, 774.

Where no paper book or brief is served or filed, there is nothing for review, except the question whether the findings of fact support the judgment (161+783). Appeal and Error, ¶589, 770(1).

The rules require appellant to print only so much of record as will clearly present all questions raised by him, and respondent, deeming other parts necessary, may print a supplemental record or resort to folios of settled case (162+1054). Appeal and Error, ¶606.

MINNESOTA REPORTS

[141—]1. **New contract**—That the Secretary of state be and is hereby authorized and required on behalf of the State of Minnesota to solicit bids and enter into a contract for the printing and publishing of the number of copies of the supreme court reports of this state now required by law for the period of six years from and after October 1st, 1915, said contract to be awarded to the lowest responsible bidder whose bid shall not exceed \$1.00 per volume, and who shall furnish to said secretary of state a bond in the sum of five thousand dollars conditioned that the said reports and the printing and publishing thereof shall conform to the following specifications, to wit:

First. That the size of the volumes, the character and quality of the paper used therein, and the binding and the general mechanical execution thereof shall conform to the requirements for the printing and publication of said reports provided by section 139, General Statutes of Minnesota for 1913.

Second. That the number of copies provided for by law shall be published and delivered to the secretary of state within sixty days after the complete manuscript thereof shall be delivered by the reporter of said court to said contracting party.

Third. That at the time said party to whom said contract shall be awarded shall deliver said copies of said report to said secretary of state, free of charge, a true and correct paper matrix of said report, to be preserved by said secretary of state as part of the records of his office.

Fourth. That the party to whom said contract shall be awarded shall agree to publish and sell the same at the place of publication within this state, and at all times keep the same on sale at such place of publication in quantities of one or more copies at any one time, and upon reasonable notice of not less than ten days for the price agreed upon in said contract, and when delivered elsewhere in the state, not to exceed the sum of one dollar and twenty-five cents (\$1.25) per volume, and shall agree to stereotype the same and at all times keep the same on sale in the state of Minnesota at the contract price, and furnish the state any number of additional copies that may be thereafter required at said contract price, the copyright of all reports published under said contract vesting in the secretary of state for the benefit

of the people of this state; provided, however, that nothing herein contained shall be so construed as to prevent the contractors by whom any such volume is published, their representatives or assigns, from continuing the publication and sale of such volumes, so long as they shall comply in all respects with the requirements of this act in respect to the character, sale and price of such volume. ('15 c. 250 § 1)

DISTRICT COURT

145. Power to issue writs—

A landowner may review proceedings for the establishment of a town ditch by writ of certiorari, but he cannot maintain an action to restrain the construction of the ditch (125-403, 147+273). Injunction, ¶7.

An injunction suit to restrain enforcement of a statute claimed by plaintiff to be unconstitutional held one to enjoin criminal prosecutions, and not maintainable, though it might avoid a multiplicity of actions (124-239, 144+764, 49 L. R. A. [N. S.] 951). Injunction, ¶105(2).

A covenant on the sale of the good will of a business not to engage in a competitive business in the same city is enforceable by injunction (124-49, 144+415). Injunction, ¶61(2).

Contractors for the construction of a drainage ditch held not to show irreparable injury, or that their remedy at law was inadequate, so as to entitle them to restrain actions on their bond (124-10, 144+423, L. R. A. 1915F, 1012, Ann. Cas. 1915B, 448). Injunction, ¶26(1).

Injunction will lie to restrain one resident of this state from maintaining an action against another resident in another state, where equitable grounds exist, such as violation of law of this state or other disadvantage will accrue to defendant (122-24, 141+1096, 46 L. R. A. [N. S.] 695). Injunction, ¶33.

Ground for restraining action in order to avoid a multiplicity of suits (see 124-10, 144+423, L. R. A. 1915F, 1012, Ann. Cas. 1915B, 448). Injunction, ¶26(4).

146. Writs and processes, how tested, signed, etc.—

124-456, 145+167; note under § 8284.

149. Courts not open Sundays—Exceptions—No court shall be opened on Sunday for any purpose other than to receive a verdict, give additional instructions to or discharge a jury; but this provision shall not prevent a judge of such court from exercising jurisdiction in any case where it is necessary for the preservation of the peace, the sanctity of the day or the arrest and commitment of an offender. (Amended '15 c. 38 § 1)

150. Times for holding general terms— * * *

First judicial district— * * *

The provisions of this section relating to the first district are superseded by 1915 c. 327. See § [151—]1.

Second judicial district— * * *

The provisions of this section relating to the second district are superseded by 1917 c. 5. See § [151—]2.

Third judicial district— * * *

The provisions of this section relating to the third judicial district are superseded by 1917 c. 2. See § [151—]3.

Seventh judicial district— * * *

The provisions of this section relating to the seventh district are superseded by 1913 c. 9, amended 1915 c. 90; 1917 c. 37. See § 153.

Ninth judicial district— * * *

The provisions of this section relating to the ninth district are superseded by 1915 c. 67. See § [153—]1.

Tenth judicial district— * * *

The provisions of this section relating to the tenth district are superseded by 1917 c. 367. See § [153—]2.

Fourteenth judicial district— * * *

The provisions of this section relating to the fourteenth district are superseded by 1913 c. 40, amended 1915 c. 43; 1917 c. 67. See § 156.

Sixteenth judicial district— * * *

The provisions of this section relating to the sixteenth district are superseded by 1915 c. 64. See § [158—]1.

Nineteenth judicial district— * * *

Kanabec County—For terms in, see §§ [158—]2, [158—]3.

151. [Superseded.]

See note under § [151—]1.

[151—]1. Same—First judicial district—The general terms of the district court of the first judicial district of the State of Minnesota shall be held as follows:

In Goodhue County—The second Monday in March and the first Monday in October each year.

In Dakota County—The first Monday in May and the second Monday in November each year. ('15 c. 327 § 1)

Section 2 repeals inconsistent acts, etc. See §§ 150, 151.

[151—]2. Same—Second judicial district—The general terms of the District Court of the Second Judicial District of the State of Minnesota shall be held each year at the time herein prescribed, as follows:

In Ramsey County—the first Monday in October in each year. ('17 c. 5 § 1)

Section 2 repeals inconsistent acts, etc. See § 150.

[151—]3. Same—Third judicial district—The general terms of the District Court in the several counties constituting the Third Judicial District of the State of Minnesota shall be held each year at the times herein prescribed as follows:

Olmstead County on the first Monday in June and December;

Wabasha County on the second Monday in May and November;

Winona County on the second Monday in January, the third Monday in April and September; provided that no grand jury shall be drawn or summoned for the April term of said Court in Winona County, except upon the direction of the presiding judge of the District Court of said county. ('17 c. 2 § 1)

153. Same—Seventh judicial district—From and after the passage of this act the general terms of the district court in and for the several counties composing the seventh judicial district of the State of Minnesota, shall be held in each year as follows:

In Becker County on the fourth Monday in March and the first Monday in October.

In Benton County on the second Monday in April and the first Monday in October.

In Clay County on the second Monday in May and the first Monday in December.

In Douglas County on the fourth Monday in February and the first Tuesday in September.

In Mille Lacs County on the fourth Tuesday in March and the third Tuesday in October.

In Morrison County on the second Monday in April, and in the odd numbered years on the first Monday in November, and in the even numbered years on the Wednesday next following general election day.

In Otter Tail County on the second Monday in May and the first Monday in December.

In Stearns County on the second Monday in May and the first Monday in December.

In Todd County on the second Monday in March and the third Monday in September.

In Wadena County on the fourth Monday in April and the second Monday in November. ('13 c. 9 § 1, amended '15 c. 90; '17 c. 37 § 1)

[153—]1. Same—Ninth judicial district—The general terms of the district court in the several counties constituting the Ninth Judicial District of the State of Minnesota shall be held each year at the times herein prescribed, as follows:

Brown county, on the third Monday in May and the second Monday in December.

Nicollet county, on the first Monday in May and the second Monday in October.

Redwood county, on the third Monday in April and the fourth Monday in October.

Lyon county, on the first Monday in June and the third Monday in November.

Lincoln county, on the third Monday in March and the fourth Monday in September. ('15 c. 67 § 1)

Section 2 repeals inconsistent acts, etc. See § 150.

By § 3 the act takes effect July 1, 1915.

[153—]2. **Same—Tenth judicial district**—That the general terms of the district court to be held each year in the several counties constituting the tenth judicial district of Minnesota shall be held commencing on the day hereinafter described, as follows, to-wit:

In Fillmore county on the fourth Monday in May, and the second Monday in November.

In Freeborn county on the first Monday in February, the second Monday in May, and the fourth Monday in September.

In Houston county on the last Tuesday in April and the first Tuesday in December, provided that no grand jury shall be called for the April term except upon the special order of the presiding judge, directing that a grand jury be drawn.

In Mower county on the second Monday in January, and the second Monday in June. ('17 c. 367 § 1)

Section 2 repeals inconsistent acts, etc. See § 150 and 1915 c. 115.

156. **Same—Fourteenth judicial district**—The general terms of the district court shall be held each year in the several counties constituting the Fourteenth Judicial District of Minnesota, at the times herein prescribed, as follows:

Kittson County, on the third Monday in June and the second Monday in December.

Marshall County, on the fourth Monday in May and the fourth Monday in November.

Norman County, on the second Monday in May and the second Monday in November.

Pennington County, on the fourth Tuesday in June and the first Tuesday in February.

Mahnomen County, on the fourth Tuesday in October.

Polk County, on the first Monday in June, and the first Monday after the first day of January.

Red Lake County, on the fourth Monday in March and the third Monday in November.

Roseau County, on the third Monday in May and the fourth Monday in October. ('13 c. 40 § 1, amended '15 c. 43; '17 c. 67 § 1)

1917 c. 67 § 2 repeals inconsistent acts, etc. See § 150.

[158—]1. **Same—Sixteenth judicial district**—The general terms of the District Court in the sixteenth judicial district of this state, shall be held in the several counties in each year at the times hereinafter prescribed, as follows:

In Stevens County: First Monday in March and first Monday in October.

In Big Stone County: Third Monday in March and second Monday in October.

In Traverse County: First Monday in May and second Monday in November.

In Grant County: First Monday in June and fourth Monday in October.

In Wilkin County: Third Monday in May and second Monday in December.

In Pope County: Second Monday in June and fourth Monday in November. ('15 c. 64 § 1)

Section 2 repeals inconsistent acts, etc. See §§ 150, 158.

[158—]2. **Same—Nineteenth judicial district—Kanabec county**—The general terms of the District Court shall be held in the County of Kanabec in each year at the times herein prescribed as follows:

The general term on the third Tuesday in August. ('17 c. 9 § 1)

Section 3 repeals inconsistent acts, etc. See § 150.

[158—]3. **Same—Grand and petit juries**—In addition thereto general terms of Court shall be held in Kanabec County on the first Tuesday in January, on the fourth Tuesday in March and the third Wednesday in June, for the trial and determination of both criminal and civil cases, but no grand or petit jury shall be drawn or summoned unless the Court shall so direct by a written order made and filed with the Clerk of Court of the County, at least twenty days before the dates herein fixed for holding said Court. ('17 c. 9 § 2)

160. **Absence of judge—Who may act—Exceptions—**

Where the trial judge has vacated his office, another judge in the same district may hear a motion for a new trial (125-475, 147+654). New Trial, ~~6~~114.

161. **Adjourned and special terms—**

Cited (132-454, 157+706).

166. **[Repealed.]**

See § [7971—]1.

The discharge of the whole or part of a jury panel, and the summoning of a new one, rests in the sound discretion of the trial court (124-162, 144+752, Ann. Cas. 1915B, 377). Jury, ~~6~~70(1).

The fact that special veniremen were summoned from only 7 out of 36 towns, cities, and villages in the county, and that 8 were summoned from one village and others from points near to it, is not ground for challenge to the panel; no bad faith, fraud, or oppression being established, and it not appearing that the men selected were not as a class fair-minded jurors (124-162, 144+752, Ann. Cas. 1915B, 377). Jury, ~~6~~70(10).

176. **Eleventh judicial district—St. Louis county—General terms**—General terms of the District Court for the County of St. Louis, are hereby established to be held in the city of Virginia, in said County on the first Tuesday of April and the fourth Tuesday of August and the first Tuesday of December, in each year, and in the village of Hibbing on the first Tuesday of February and June and the fourth Tuesday of October in each year, and at the city of Ely on the third Tuesday in January and the second Tuesday in August in each year, for the trial of all actions and proceedings, civil and criminal, with the same force and effect as though held at the County seat of said County; and said terms shall be in addition to the general terms of said District Court held at the County seat of said County, as now provided by law. Provided, that all proceedings for the registration of title to real estate shall be tried at the County Seat of said County, as now provided by law. Provided further, that all other actions involving title to real estate shall be tried at the County Seat of said County, except that by written consent of all parties thereto any such action may be tried at said city of Virginia, or the village of Hibbing or city of Ely. Provided further, that in any action involving the title to real estate if the plaintiff shall in his summons and complaint state that he desires such action tried at the city of Virginia or the village of Hibbing or the city of Ely, such action shall be tried at such city or village, unless the defendant or any one of the defendants in said action shall in his answer demand that said action be tried at the County Seat. Provided further, that no officer having in his custody any of the public records of St. Louis County shall be required to produce any of said records at the trial of any action herein provided for, except at the County Seat, save on an order of said Court providing for the immediate return of any such records to the proper office. Provided further, that such regular terms of Court shall not be held at the village of Hibbing or the city of Ely as aforesaid, unless the said village of Hibbing and said city of Ely shall have previously, without any expenses to the County of St. Louis, provided suitable rooms for the holding of such terms of Court and the accommodation of the Clerk

and a proper place for the confinement of prisoners during such terms. (Amended '15 c. 93 § 1)

Hearings under the Workmen's Compensation Act are to be held at the time and place fixed by the judge, regardless of the time and place of holding the regular terms of court (129-423, 152+838). Master and Servant, ~~§~~409.

177. Same—Special terms—Special terms of said District Court shall also be held at said city of Virginia at least once in each month and at said village of Hibbing, at least once in each month, on such days and at such times as the Court may designate by order, for the hearing of such matters as are usually heard at special terms and at Chambers in the District Court, and the Court may by order, provide for holding special terms of Court at the city of Ely at any time when in the judgment and discretion of the court it shall deem expedient so to do, for the hearing of such matters as are usually heard at special terms and at chambers, in the District Court, and may in such order if he deems it expedient, provide for the trial of issues of fact and law in cases where such action is to be tried by the Court without a jury or a jury has been waived by the parties to the action, and such waiver has been filed with the Clerk of Court. (Amended '15 c. 93 § 2)

Cited (129-423, 152+838).

178. Same—Deputy sheriffs and clerks—There shall be at all times a chief deputy sheriff of said county and a chief deputy clerk of said district court and such other deputies as may be necessary, resident at said city of Virginia and village of Hibbing, and their appointment shall be made in the same manner as other deputy sheriffs and deputy clerks of the district court in said counties.

The salaries of such deputies shall be fixed and paid in the same manner as other such deputies, except that the salary of such chief deputies shall be not more than \$2,000 per year.

But the office of said deputy sheriff and the offices of said deputy clerk at Virginia and Hibbing shall not in any sense be considered or deemed to be the office of the sheriff or the office of the clerk of said court for any purpose, except for the performance of their respective duties, relating solely to proceedings tried or to be tried at said city of Virginia or village of Hibbing, except that marriage licenses and naturalization papers may be issued by said deputy clerk. ('15 c. 371 § 2, amended '17 c. 255 § 2)

See, also, 1915 c. 93 § 3.

179. [Superseded.]

See § [179—]1.

[179—]1. Same—Courthouse—Jail—Expenses—It is hereby made the duty of the board of county commissioners of the county of St. Louis, to furnish and maintain adequate accommodations for the holding of terms of the district court at the village of Hibbing, and the city of Virginia, proper offices for said deputies, and a proper place for the confinement and maintenance of the prisoners at the village of Hibbing and the city of Virginia.

And said county shall also reimburse the clerk of said court and his deputies as herein provided for, and the county attorney and his assistants and the district judges of said district and the official court reporter for their traveling expenses actually and necessarily incurred in the performance of their respective official duties. ('15 c. 371 § 1, amended '17 c. 255 § 1)

This section appears to supersede § 179.

180. Same—Grand and petit jurors—Grand and petit jurors for each of said general terms shall be selected, drawn and summoned in the same manner in all respects as for the general terms of said court held at the County Seat of said County, except when in the discretion of the Court, there will be no necessity of drawing a grand jury or petit jury, the Court may enter its order directing that no grand jury or petit jury be summoned for the particular term therein mentioned. (Amended '15 c. 93 § 4)

182. Same—Trial of criminal cases—All persons bound over to the Grand Jury, charged with a criminal offense, by any justice of the peace or municipi-

pal court, shall be tried at the place of holding regular terms of said district court, which is nearest to the court binding said party over; except as herein-after provided; and all criminal offenses committed in any city, village, township or unorganized territory shall be tried at the place of holding the regular term of said district court which is nearest to said city, village, township or place where said offense is committed. Provided that when said offense is committed nearer to Virginia or Hibbing or Ely than to the county seat, the party committing said offense shall be tried at the first term of court to be held at either Virginia or Hibbing or Ely at which a grand jury is in session. Provided further, that when such offense is committed nearer the city of Ely than any of the other places referred to, said cause, in the discretion of the Court, or on demand of the person charged with the offense, may be tried at said city of Ely. (Amended '15 c. 93 § 5)

183. Same—Trial of civil actions—

Hearings under the Workmen's Compensation Act are to be held at the time and place fixed by the judge, regardless of the time and place of holding the regular terms of court (129-423, 152+838). Master and Servant, ~~§ 400~~.

184. Same—Summons—Place of trial, how determined—Any party wishing to have any civil cause commenced by him in said Court, tried in said city of Virginia, shall in the summons issued therein, in addition to the usual provisions, print, stamp or write thereon the words "to be tried at the city of Virginia", and any party wishing any civil cause commenced by him in said Court tried at the Village of Hibbing, shall in the summons issued therein, in addition to the usual provisions, print, stamp or write thereon the words, "to be tried at the village of Hibbing," and any party wishing any civil cause commenced by him in said Court tried at the city of Ely, shall in the summons issued therein, in addition to the usual provisions, print, stamp or write thereon the words, "to be tried at the City of Ely;" and in all cases where any summons contains any such specifications, the case shall be tried at said city of Virginia or the village of Hibbing or city of Ely, as the case may be, unless the defendant shall have the place of trial fixed in the manner hereinafter set out.

If the place of trial designated is not the proper place of trial, as specified in this act, the cause shall nevertheless be tried in such place, unless the defendant, in his answer in addition to the other allegations of defense, shall plead the location of his residence, and demand that such action be tried at the place of holding said court nearest his residence as herein provided; and in any case where the answer of the defendant pleads such place of residence and makes such demand of place of trial, the plaintiff in his reply, may admit or deny such allegations of residence, and if such allegations of residence be not expressly denied, such cause shall be tried at the place so demanded by the defendant, and if the allegations of residence be so denied, then the place of trial shall be determined by the Court of motion.

If there are several defendants, residing at different places in said county, the trial shall be at the place which the majority of such defendants unite in demanding, or if the numbers are equal, at the place nearest the residence of the majority.

Nothing in this act contained, however, shall be construed to abridge the power of the court, for cause shown to change the place of trial of any such action or proceeding, civil or criminal. (Amended '15 c. 93 § 6)

129-423, 152+838.

185. Same—Papers, where filed—Judgments, etc.—After the place of trial of any cause is determined, as provided in this act, all papers, orders and documents pertaining to all causes to be tried at Virginia and filed in court shall lie [be] filed and be kept on file at the clerk's office in the city of Virginia, and all causes to be tried in Hibbing and all papers, orders and documents pertaining thereto shall be filed and be kept on file at the clerk's office in the village of Hibbing.

In all actions tried at the city of Virginia or the village of Hibbing, the clerk of said court as soon as final judgment is entered, shall forthwith cause such judgment to be docketed in his office at the county seat; and when so

docketed the same shall become a lien on real estate and have the same effect as judgments entered in causes tried at the county seat.

Provided, that in all actions tried at said city of Virginia or said village of Hibbing, involving the title of real estate, upon final judgment being entered, all the papers in said cause shall be filed in the clerk's office at the county seat and the final judgment or decree recorded therein, and a certified copy of all papers in said case shall be made by the clerk and retained at the clerk's office in the city of Virginia or in the clerk's office in the village of Hibbing where the action was originally tried, without additional charge to the parties to said action. (Amended '17 c. 255 § 3)

This section supersedes 1915 c. 93 § 7.

See § [189—]1 providing for six judges.

[189—]1. **Six judges—Powers**—There shall be elected in the eleventh judicial district of said state six judges of the district court of said district, any one or more of whom shall have, and exercise, the powers of the said court, as now prescribed by law relative to the present judges of said court except as otherwise provided by this act, and all laws now in force, whether general or special, as to the qualifications, election, canvass of votes, oath and terms of office, and commencement of such term, compensation, jurisdiction, duties, authority and powers of the present judges of the district court, shall apply to all the judges of said court, and their successors shall be elected, and vacancies in their offices shall be filled, as now provided in relation to the present judges of the said district court.

Provided, however, that the present judges of the said district court shall be judges of the said court for the unexpired terms for which they were elected. ('11 c. 193 § 1, amended '17 c. 484 § 1)

[189—]2. **Same—Appointment**—That immediately upon the passage of this act, the governor of the state shall appoint a competent person to be one of the judges of the said district court, who shall immediately thereafter qualify and enter upon the duties of said office, and shall hold the said office until a successor shall have been elected and qualified, which said successor shall be elected at the first general election that occurs more than thirty days after the passage of this act. ('17 c. 484 § 2)

[201—]1. **Second district—Additional judge**—One judge of the District Court of the Second Judicial District of the State of Minnesota, in addition to the present judges of said court, is hereby authorized, and the office of such additional judge is hereby created. ('15 c. 16 § 1)

[201—]2. **Same—Election**—One incumbent to fill the office hereby created shall be elected at the general election to be held next after the passage of this act. The person so to be elected shall have and possess the qualifications prescribed by law for the other judges of said court. He shall take office on the first Monday in January, 1917, and shall serve for a term of six years. His successor shall be elected as shall then be provided by law for the election of judges of said court. ('15 c. 16 § 2)

[201—]3. **Same—Powers and duties—Compensation**—The incumbent of the office hereby created shall have and exercise all the rights, powers and privileges and shall be subject to the same duties and obligations as are by law granted to or imposed on the other judges of said court. He shall receive the same compensation as such other judges, to be paid in the same manner and at the same time as to the other judges of said court. ('15 c. 16 § 3)

[201—]4. **Same—Appointment—Vacancy**—Within ten days after the passage of this act, the governor of the State of Minnesota shall appoint one suitable and legally qualified person to hold the office of Judge of the District Court of the Second Judicial District hereby created until the election and taking of office by incumbent thereof under the provisions of Section 2 [201—2] of this act. Any vacancy in the office hereby created shall be filled in like manner as is or shall be provided by law for the filling of vacancies in the offices of other Judges of the District Court of said District. ('15 c. 16 § 4)

[201—]5. **Second district—Additional judge**—One judge of the district court of the second judicial district of the state of Minnesota, in addition to the present judges of said court, is hereby authorized, and the office of such additional judge is hereby created. ('17 c. 490 § 1)

[201—]6. **Same—Election**—One incumbent to fill the office hereby created shall be elected at the general election to be held after the passage of this act. The person so to be elected shall have and possess the qualifications prescribed by law for the other judges of said court. He shall take office on the first Monday in January, 1919, and shall serve for a term of six years. His successor shall be elected as shall then be provided by law for the election of judges of said court. ('17 c. 490 § 2)

[201—]7. **Same—Powers and duties—Compensation**—The incumbent of the office hereby created shall have and exercise all the rights, powers and privileges and shall be subject to the same duties and obligations as are by law granted to or imposed on the other judges of said court. He shall receive the same compensation as such other judges, to be paid in the same manner and at the same time as to the other judges of said court. ('17 c. 490 § 3)

[201—]8. **Same—Appointment—Vacancy**—Within ten days after the passage of this act the governor of the state of Minnesota shall appoint one suitable and legally qualified person to hold the office of judge of the district court of the second judicial district hereby created until the election and taking office by incumbent thereof under the provisions of section 2 [201—6] of this act. Any vacancy in the office hereby created shall be filled in like manner as is or shall be provided by law for the filling of vacancies in the offices of other judges of the district court of said district. ('17 c. 490 § 4)

[210—]1. **Fourth district—Additional judge**—One additional judge of the district court of the fourth judicial district of the State of Minnesota, in addition to the present judge of said court are hereby authorized and the offices of such additional judge are hereby created. ('17 c. 494 § 1)

[210—]2. **Same—Election**—The incumbent of the office hereby created shall be elected at the general election to be held next after the passage of this act. The person so to be elected shall have and possess the qualifications prescribed by law for the other judges of said court. He shall take office on the first Monday in January, 1919, and shall serve for a term of six years. His successors shall be elected as shall then be provided by law for the election of judges of said court. ('17 c. 494 § 2)

[210—]3. **Same—Powers and duties—Compensation**—The incumbent of the office hereby created shall have and exercise all the rights, powers and privileges and shall be subject to the same duties and obligations as are by law granted to or imposed on the other judges of said court. He shall receive the same compensation as such other judges, to be paid in the same manner and at the same time as the other judges of said court. ('17 c. 494 § 3)

[210—]4. **Same—Appointment—Vacancy**—Within five days after the passage of this act, the governor of the State of Minnesota shall appoint one suitable and legally qualified person to hold the office of judge of the district court of the fourth judicial district hereby created, until the election and taking of office by the incumbent thereof under the provisions of section 2 of this act. Any vacancy in the office hereby created shall be filled in like manner as shall be provided by law for the filling of vacancies in the offices of the other judges of the district court of said district. ('17 c. 494 § 4)

CLERK

[226—]1. **Transcribing docket entries of judgments in counties having not less than 45,000 nor more than 50,000 inhabitants**—That the clerk of the district court in any county of this state having a population of not less than forty-five thousand nor more than fifty thousand, according to the last United States Census is hereby authorized at the expense of his county, to procure a suitable book, the form thereof to be approved by one of the judges of the

district court of said county for the transcribing therein of the docket entries of all judgments docketed in the office of the clerk of said district court within the last ten years and now remaining unsatisfied of record. ('17 c. 12 § 1)

[226—]2. **Same—County board to authorize—Compensation—**Before procuring said judgment docket and before transcribing or entering any judgments therein, the board of county commissioners of any such county shall first by resolution entered upon their records, authorize the clerk of such district court to procure such judgment docket and direct the entry and docketing of said judgments therein, and shall then and there in such resolution fix the compensation to be paid said clerk therefor. ('17 c. 12 § 2)

[226—]3. **Same—Compensation, how paid—**The compensation of said clerk shall be paid by the county on the presentation of a bill therefor, duly verified in the usual way accompanied by a certificate from one of the judges of the district court of said county that the work of transcribing said judgments in said judgment docket has been duly and properly performed. ('17 c. 12 § 3)

[226—]4. **Same—To what counties not applicable—**This act shall not apply to any county in this state the salary of whose officers is fixed by any special law. ('17 c. 12 § 4)

[226—]5. **Same—When to be completed—**The transcribing of judgments pursuant to the provisions of this act must be completed by the clerk of the district court of any such county not later than the first day of June 1917. ('17 c. 12 § 5)

228. To enter unregistered cases—

130-365, 153+861; note under § 7904.

Notice—A subsequently docketed judgment against the grantor in an absolute deed given to secure a debt, is not constructive notice to a subsequent purchaser from the grantee (123-293, 143+720). Judgment, ~~6~~787.

230. Vacancy—

Cited (131-401, 155+629).

233-235. [Repealed.]

See § [7196—]35.

[235—]1. **Counties having not less than 45,000 and not more than 75,000 inhabitants—Deputy clerk—**That the clerk of the district court in any county of this state now or hereafter having a population of not less than forty-five thousand and not more than seventy-five thousand, and in which the fees or salary of clerks of the district court are not now fixed or regulated by or under a special law are hereby authorized to appoint one deputy clerk of the district court in the manner hereinafter provided. ('15 c. 71 § 1)

Section 4 repeals inconsistent acts, etc.

[235—]2. **Same—Duty of judge—Compensation, powers and duties of deputy clerk—**Whenever the clerk of the district court of such county shall desire the appointment of a deputy clerk pursuant to the provisions of this act he shall make an application in writing to a judge of the district court of his county, setting forth in such application the reasons for the appointment of a deputy and thereupon said judge shall consider and pass upon such application, and if in his opinion and judgment the appointment of a deputy clerk of such county pursuant to the provisions of this act, is reasonably necessary he shall by order authorize the clerk of said district court to appoint one deputy clerk of the court at a yearly compensation to be fixed by said judge in said order, which compensation when so fixed shall be payable in monthly installments out of the county treasury of the county upon warrants issued by the county auditor of such county. Said deputy clerk when so appointed shall possess all the powers and perform all the duties incident to deputy clerks of the district court as the same are now fixed by law. ('15 c. 71 § 2)

[235—]3. **Same—Appointment of other deputies—**This act shall not be construed to prohibit the appointment by the clerk of the district court of such counties of any other deputies he may desire to appoint, but such other

deputies must be paid by him in person out of the fees or salary of his office. ('15 c. 71 § 3)

[239—]1. **Counties having less than 45,000 inhabitants—Deputy clerk hire**—In all counties of the state of Minnesota having a population of less than forty-five thousand (45,000) inhabitants the clerks of the district court of such counties shall be allowed deputy clerk hire to be paid out of the county treasury upon the warrant of the county auditor, the clerk of the district court having first certified to the county auditor that such services have been rendered and are reasonably worth the sum charged, and no allowance for such deputy clerk hire shall be made or received in any case except for services actually rendered: provided that this section shall not apply to any county wherein deputy clerk hire is now fixed by special law. ('17 c. 476 § 1)

[239—]2. **Same—Counties classified**—For the purpose of fixing the amount of deputy clerk hire to be allowed the clerks of the district court the several counties of the state of Minnesota having a population of less than forty-five thousand (45,000) inhabitants are hereby classed as follows:

Such counties having a population of less than seven thousand (7,000) shall be known as class "A"; those counties having a population of seven thousand (7,000) and less than twelve thousand (12,000) shall be known as class "B"; those counties having a population of twelve thousand (12,000) and less than eighteen thousand (18,000) shall be known as class "C"; those counties having a population of eighteen thousand (18,000) and less than thirty thousand (30,000) shall be known as class "D"; those counties having a population of thirty thousand (30,000) and less than forty-five thousand (45,000) inhabitants shall be known as class "E."

The county auditor in determining the population of any county for the purpose of ascertaining the amount of deputy clerk hire to be allowed to the clerk of the district court of such county as herein provided, shall take the census of the year 1910, or any census taken thereafter by the United States or by the state of Minnesota, and add two per cent to the population as shown by the census last taken for each year expiring after the year in which such census was last taken. ('17 c. 476 § 2)

[239—]3. **Same—Clerk hire, how fixed**—The several clerks of the district court shall be allowed an amount of deputy clerk hire for each year, payable from time to time as such services may be rendered and payment therefor be due, from the treasurer of the county out of the revenue fund upon the warrant of the county auditor, as follows: In counties of class "A" the sum of two hundred dollars (\$200.00); in class "B" the sum of three hundred dollars (\$300.00); in class "C" the sum of four hundred dollars (\$400.00); in class "D" the sum of five hundred dollars (\$500.00); in class "E" the sum of six hundred dollars (\$600.00). Provided, that the judge of the district court of any county in the classes herein set out, may by order, a copy of which to be filed with the county auditor, allow the clerk of the district court of the county such additional sums for deputy clerk hire as may under the circumstances arising seem necessary, just and reasonable. ('17 c. 476 § 3)

[239—]4. **Same—Inconsistent acts repealed**—All acts and parts of acts, except those wherein deputy clerk hire for clerks of district court is now fixed by special law, inconsistent herewith are hereby repealed. ('17 c. 476 § 4)

[239—]5. **Counties having not less than 50 and not more than 70 townships and an assessed valuation of not more than \$3,000,000—Salary**—In each county of this state now or hereafter containing not less than fifty congressional townships and not more than seventy congressional townships, and having at any time an assessed valuation of all taxable property, as finally equalized by the state tax commission each year, of not more than three million dollars, the clerk of the district court shall receive an annual salary of twelve hundred dollars, payable in equal monthly installments out of the county treasury, which shall be in full compensation for all services rendered by such clerk for his county. ('17 c. 374 § 1)

[239—]6. **Same—To what counties applicable**—This act shall not apply to any county where the salary of such county official is now fixed by special law. ('17 c. 374 § 2)

STENOGRAPHIC REPORTERS

248. Phonographic reporters in districts comprising counties having 300,000 inhabitants—That each judge in any judicial district in this state which comprises, or which may hereafter comprise, a single county of three hundred thousand (300,000) inhabitants or over, may appoint a phonographic reporter, who shall be well skilled in his profession and competent to discharge the duties required, and who shall be a sworn officer of said court, and shall hold his office during the pleasure of said judge so appointing him. The salary of said reporter shall be three thousand (\$3,000.00) dollars per annum, payable in monthly installments by the county treasurer of the county comprised in such judicial district, from any funds in his hands not otherwise appropriated. ('07 c. 186 § 1, amended '15 c. 175 § 1)

[251—]1. **Third judicial district—Traveling expenses**—The official reporter of the district court of the third judicial district of the state shall be paid, in addition to the amounts now provided by law, all sums he shall hereafter pay out as necessary railway, traveling and hotel expenses while absent from his place of residence in the discharge of his official duties.

Such expenses shall be paid by the respective counties for which the same were incurred, upon presentation of a verified and itemized statement of the reporter therefor, duly approved by the judge of said court, to the county auditor, whereupon the auditor shall issue his warrant in payment thereof. ('17 c. 144 § 1)

[251—]2. **Fifth judicial district—Traveling expenses**—The official reporters of the district court of the fifth judicial district of the state shall be paid, in addition to the amounts now provided by law, all sums they shall hereafter pay out as necessary railway, traveling and hotel expenses while absent from their places of residence in the discharge of their official duties.

Such expenses shall be paid by the respective counties for which the same were incurred, upon presentation of a verified and itemized statement of the reporter therefor, duly approved by the judge of said court, to the county auditor, whereupon the auditor shall issue his warrant in payment thereof. ('17 c. 141 § 1)

[251—]3. **Sixth judicial district—Traveling expenses**—The official reporter of the district court of the sixth judicial district of the state shall be paid, in addition to the amounts now provided by law, all sums he shall hereafter pay out for necessary railway, traveling and hotel expenses within said district, while in the discharge of his official duties.

Such expenses shall be paid by the respective counties for which the same were incurred, upon presentation of a verified and itemized statement of the reporter therefor, duly approved by the judge of said court, to the county auditor, whereupon the auditor shall issue his warrant in payment thereof. ('17 c. 147 § 1)

[251—]4. **Seventh judicial district—Traveling expenses**—The official reporters of the district court of the seventh judicial district of the state shall be paid, in addition to the amounts now provided by law, all sums they shall hereafter pay out as necessary railway, traveling and hotel expenses while absent from the places of residence of the district judge by whom each reporter is appointed in the discharge of their official duties.

Such expenses shall be paid by the respective counties for which the same were incurred, upon presentation of a verified and itemized statement of the reporter therefor, duly approved by the judge of said court, to the county auditor, whereupon the auditor shall issue his warrant in payment thereof. ('17 c. 142 § 1)

[251—]5. **Eighth judicial district—Traveling expenses**—The official reporters of the district court of the eighth judicial district of the state shall be

paid, in addition to the amounts now provided by law, all sums they shall hereafter pay out as necessary railway, traveling and hotel expenses while absent from their places of residence in the discharge of their official duties.

Such expenses shall be paid by the respective counties for which the same were incurred, upon presentation of a verified and itemized statement of the reporter therefor, duly approved by the judge of said court, to the county auditor, whereupon the auditor shall issue his warrant in payment thereof. ('17 c. 148, § 1)

[251—]6. Ninth judicial district—Traveling expenses—The official reporters of the district court of the ninth judicial district of the state shall be paid, in addition to the amounts now provided by law, all sums they shall hereafter pay out as necessary railway, traveling and hotel expenses while absent from their places of residence in the discharge of their official duties.

Such expenses shall be paid by the respective counties for which the same were incurred, upon presentation of a verified and itemized statement of the reporter therefor, duly approved by the judge of said court, to the county auditor, whereupon the auditor shall issue his warrant in payment thereof. ('17 c. 140, § 1)

[251—]7. Twelfth judicial district—Traveling expenses—The official reporters of the district court of the twelfth judicial district of the state shall be paid, in addition to the amounts now provided by law, all sums they shall hereafter pay out as necessary railway, traveling and hotel expenses while absent from their places of residence in the discharge of their official duties.

Such expenses shall be paid by the respective counties for which the same were incurred, upon presentation of a verified and itemized statement of the reporter therefor, duly approved by the judge of said court, to the county auditor, whereupon the auditor shall issue his warrant in payment thereof. ('17 c. 146 § 1)

[251—]8. Thirteenth judicial district—Traveling expenses—The official reporters of the district court of the thirteenth judicial district of the state shall be paid, in addition to the amounts now provided by law, all sums they shall hereafter pay out as necessary railway, traveling and hotel expenses while absent from their places of residence in the discharge of their official duties.

Such expenses shall be paid by the respective counties for which the same were incurred, upon presentation of a verified and itemized statement of the reporter therefor, duly approved by the judge of said court, to the county auditor, whereupon the auditor shall issue his warrant in payment thereof. ('17 c. 145 § 1)

[251—]9. Fourteenth judicial district—Appointment—Salary and expenses—In the Fourteenth Judicial District of the State of Minnesota each judge may appoint a competent stenographer as reporter of the court to hold office and qualify in the same manner, perform the same duties and receive the same transcript fees as other court reporters under existing laws applicable to judicial districts which do not contain a city of the first class, and the judges of such districts shall fix the salary of each reporter appointed therein at a sum not to exceed twenty-five hundred dollars (\$2500.00) per year and necessary railway, traveling and hotel expenses while absent from their places of residence in the discharge of their official duties, by an order made and filed in the first instance with the respective county auditors of the district so affected within thirty days after the approval of this act, and by subsequent orders made and filed with said county auditors annually on or before the first Monday in January, and all such orders shall apportion the salaries of said reporters among the several counties of said district and require the payment thereof in the same manner as is provided by section 119 of the Revised Laws of the State of Minnesota for the year 1905 as amended by chapter 168, General Laws of 1909 [244]. The expenses of such reporters shall

be paid by the county for which the same were incurred upon presentation of a verified statement of the reporter therefor duly approved by the presiding judge; whereupon the auditor shall issue his warrant in payment thereof. ('17 c. 51 § 1)

[251—]10. Fifteenth judicial district—Appointment—In the Fifteenth Judicial District of the State of Minnesota, each judge may appoint a competent stenographer as reporter of the court to hold office and qualify in the same manner, perform the same duties and receive the same transcript fees as other court reporters under existing laws applicable to judicial districts which do not contain a city of the first class; and the judges of such districts shall fix the salary of each reporter appointed therein at a sum not to exceed three thousand dollars (\$3,000) per year by an order made and filed in the first instance with the respective county auditors of the district so affected on or before May 1st, 1915, and by subsequent orders made and filed with said county auditors annually on or before the first Monday in January, and all such orders shall apportion the salaries of the reporters among the several counties and require the payment thereof in the same manner as is now provided by section 119 of the Revised Laws of the State of Minnesota for the year 1905, as amended by Chapter 168, General Laws of 1909 [244]. ('15 c. 50, § 1)

[251—]11. Sixteenth judicial district—Traveling expenses—The official reporter of the district court of the sixteenth judicial district of the state shall be paid, in addition to the amounts now provided by law, all sums he shall hereafter pay out for necessary railway, traveling and hotel expenses within said district, while in the discharge of his official duties.

Such expenses shall be paid by the respective counties for which the same were incurred, upon presentation of a verified and itemized statement of the reporter therefor, duly approved by the judge of said court, to the county auditor, whereupon the auditor shall issue his warrant in payment thereof. ('17 c. 371 § 1)

[251—]12. Eighteenth judicial district—Traveling expenses—The official reporter of the district court of the eighteenth judicial district of the state shall be paid, in addition to the amounts now provided by law, all sums he shall hereafter pay out as necessary railway, traveling and hotel expenses while absent from his place of residence in the discharge of his official duties.

Such expenses shall be paid by the respective counties in the same proportions as the salary of such reporter is paid, upon presentation of a verified and itemized statement of the reporter therefor, duly approved by the judge of said court, to the county auditor, whereupon the auditor shall issue his warrant in payment thereof. ('17 c. 149 § 1)

[251—]13. Nineteenth judicial district—Appointment—Salary and expenses—In the nineteenth judicial district of the State of Minnesota the judge of the district court may appoint a competent stenographer as reporter of the court to hold office and qualify in the same manner, perform the same duties and receive the same transcript fees as other court reporters under existing laws applicable to judicial districts which do not contain a city of the first class, and the judge of such district shall fix the salary of such reporter appointed therein at a sum not to exceed two thousand dollars, (\$2,000.00) per annum and necessary railway, traveling and hotel expenses while absent from his place of residence in such district in the discharge of his official duties, by an order made and filed in the first instance with the respective county auditors of the district so affected within thirty (30) days after the approval of this act, and by subsequent orders made and filed with said county auditors annually on or before the first Monday in January, and all such orders shall apportion the salary of such reporter among the several counties of said district and require the payment thereof in the same manner as is provided by section 119 of the Revised Laws of the state of Minnesota for the year 1905, as amended by chapter 168, General Laws of 1909 [244]. The expenses of such reporter shall be paid by the county for which the same shall be incurred

upon presentation of a verified statement of the reporter therefor duly approved by the presiding judge; whereupon the auditor shall issue his warrant in payment thereof. ('17 c. 143 § 1)

MUNICIPAL COURTS

See 1915 c. 10, establishing a municipal court in the city of Little Falls, subject to the provisions of this chapter; 1915 c. 66, amending "An act establishing a municipal court in the city of Ely" (Sp. Laws 1891 c. 59); 1917 c. 263, providing for an additional judge of the municipal court of the city of Minneapolis and providing for such judge to act as a court of conciliation and small debtors' court.

256. Existing courts confirmed—

What are state courts—The municipal court is a "state court," within Const. art. 6 § 1, respecting the creation of new courts by a two-thirds vote of the Legislature (130-492, 158-953, L. R. A. 1916B, 931). Courts, ¶42(5).

Gen. Laws 1895 c. 229 cited—125-304, 146-1102.

259. New courts, how established—A court of record to be known as "the Municipal Court of" is hereby established in and for every city, and in and for every incorporated village, which is the county seat of the county in which it is situated or which has or shall have one thousand (1,000) inhabitants or more, in which city or village no municipal court existed at the time of the taking effect of the Revised Laws of 1905, but no court thus established shall be organized until the city or village council so determines by a resolution adopted by a four-fifths majority of its members, and approved by its mayor or president, providing a suitable place for holding its sessions, prescribing the number of judges and other officials thereof, and fixing their compensation; and in case that two judges shall be prescribed for said court, one thereof may be called the municipal judge. (Amended '15 c. 75 § 1)

261. Judges—Election—Term—Salary—

Constitutionality—Holding over term—In view of Const. art. 6 § 9, the office of municipal judge cannot exceed seven years (131-401, 155-629). Judges, ¶7.

1913 c. 102, providing that a municipal court judge, whose term expired April 6, 1915, should hold over until his successor was elected and qualified, was invalid (162-1075). Judges, ¶9.

Const. art. 6 § 9 does not prevent the legislature from extending the term of office of a municipal judge by a provision that he shall hold over until his successor is elected and qualified, provided the extension is a reasonable one, and does not prolong the tenure beyond seven years; but a special act, the necessary effect of which is to permit a holding over beyond the fixed term, without provision for a supervening election within the seven year period, is unconstitutional (131-401, 155-629). Judges, ¶7, 9.

The provision for holding over is not affected by Const. art. 7 § 9, making the first Monday in January the official year (131-401, 155-629). Judges, ¶9.

An incumbent of the office of municipal judge, who is a candidate for re-election, may abandon his statutory right to hold over until his successor is elected and qualified, but mere peaceable surrender of the office to one holding a certificate of election is not an abandonment, where he stands ready and willing to continue in the office (131-401, 155-629). Officers, ¶63.

Where a statute does not provide for a holding over and fixes the term, that term is definite and a vacancy exists upon its expiration. On the other hand, if the statute provides that the incumbent shall continue in the office until his successor is "elected and qualified," the incumbent holds over if his purported successor is not validly elected (131-401, 155-629). Officers, ¶54, 63.

Preferential voting—Preferential system of voting under Duluth charter as applicable to the election of judges of the municipal court, see (130-492, 153-953, L. R. A. 1916B, 931). Judges, ¶2, 3.

De facto officer—Salary—A judge of a municipal court was entitled to the salary of the office during such time as he was in possession and was serving as municipal judge (162-1075). Judges, ¶22(1).

In action to recover salary of a municipal court judge evidence held to sustain a finding that he was in possession of the office and a de facto officer up to May 3, 1915, and during August and the first 13 days of September, but not to show his possession as a de facto officer from May 3d to July 30th (162-1075).

263. Jurisdiction withheld—

The municipal court of the city of Minneapolis has jurisdiction of an agreement to recover possession of leased premises for nonpayment of rent brought under the unlawful detainer statute and is not ousted of such jurisdiction by the fact that the unpaid rent amounts to a larger sum than can be recovered in such court (126-406, 148-565). Courts, ¶188(8).

The title to real estate is not involved in an action, unless the title is disputed and there is a real controversy in regard thereto, and proof that property leased by husband and

wife is the property of the wife, where the fact is not controverted, does not oust the jurisdiction of the municipal court (123-270, 143+783). Courts, \S 163.

265. Criminal jurisdiction—Justices of the peace—

Construction of provision of special act applicable to St. Paul relating to summary trials without jury, see (129-383, 152+777, Ann. Cas. 1916E, 845). Jury, \S 23(1).

266. Two judges—Daily sittings—Terms—

Construction of special act as respects right to trial by jury in prosecution for violation of ordinance, see (129-383, 152+777, Ann. Cas. 1916E, 845). Jury, \S 23(1).

272. Powers and duties—Practice—Rules—Fees—

Actions in municipal courts are within \S 7721, defining the county residence of railroad companies for the purpose of actions against them, and where the venue in such an action is properly laid the defendant has no right under this section to change it to another municipal court in the same county nearer its principal general office in the state and place of business in the county (128-225, 150+924). Courts, \S 189(2, 3).

273. Costs and disbursements—

Construction of special act, see (129-494, 152+868). Jury, \S 23(1).

275. Jury trials—

Construction of special act applicable to city of St. Paul, see (129-383, 152+777, Ann. Cas. 1916E, 845). Jury, \S 23(1).

The municipal court act of the city of St. Paul construed, and held that, there being now no "president of the common council" directed by the act to participate with the judges in the selection of a jury list, the judges alone may exercise the function, in view of \S 9411 subd. 3 (134-309, 159+789). Jury, \S 66(2).

COURT COMMISSIONER

289. Qualifications and powers—

A court commissioner has no power to set aside a judgment rendered by the district court (131-129, 154+748). Court Commissioners, \S 4.

291. Records—Office and clerical help in counties having 200,000 inhabitants—The court commissioner shall keep a record of all proceedings had before him in books procured at the expense of the county, and shall be supplied with necessary stationery, which books and unused stationery shall be delivered to his successor; and in counties having a population of two hundred thousand and over shall be supplied with a suitable office and such clerical help as may be deemed necessary by the board of county commissioners. (Amended '15 c. 203 \S 1)

PROBATE AND JUSTICE COURTS

293. *Jurisdiction—

Equity powers of probate court, see (133-124, 158+234). Courts, \S 200 $\frac{1}{4}$.

CHAPTER 5A

SALARIES OF CERTAIN STATE OFFICERS AND EMPLOYEES

294. Yearly salaries—When payable—The yearly salaries of the state officers and employees mentioned in this act shall be as herein fixed and all salaries shall be payable in monthly installments.

1. OFFICE OF GOVERNOR

Governor, seven thousand dollars; private secretary, forty-five hundred dollars; executive clerk, three thousand dollars; recording clerk, twelve hundred dollars; executive messenger, fifteen hundred dollars; stenographer, twelve hundred dollars. ('13 c. 400 \S 1 subd. 1, amended '17 c. 459 \S 1)

2. JUDICIAL DEPARTMENT

See \S [297—]1.

3. OFFICE OF SECRETARY OF STATE

See § [297—]2.

4. OFFICE OF STATE AUDITOR

Members of the legislature which enacted 1913 c. 400, are not prohibited by Const. art. 4 § 9 from becoming candidates for state auditor at the ensuing primary election; there being no increase made by that law in the compensation of the office at the time of its enactment (125-104, 145+794). Officers, ~~29~~29.

10. OFFICE OF PUBLIC EXAMINER

Public examiner, forty-five hundred dollars; deputy public examiner, three thousand dollars; corporation examiner, thirty-two hundred dollars; first assistant corporation examiner, twenty-four hundred dollars; two assistant corporation examiners, eighteen hundred dollars; four assistant public examiners, twenty-four hundred dollars; one assistant public examiner, twenty-one hundred dollars; four assistant public examiners, eighteen hundred dollars; executive clerk, fifteen hundred dollars; clerk, fifteen hundred dollars; stenographer and clerk, fifteen hundred dollars; two assistants to examiners, twelve hundred dollars; one stenographer, nine hundred dollars, one typist, six hundred dollars. ('13 c. 400 subd. 10, amended '15 c. 176; '17 c. 487 § 1)

12. OFFICE OF STATE TREASURER

State treasurer, forty-five hundred dollars; deputy state treasurer, twenty-seven hundred dollars; accountant, twenty-one hundred dollars; cashier, twenty-one hundred dollars; investment clerk, eighteen hundred dollars; check clerk, eighteen hundred dollars, stenographers and general clerks, such sum as the treasurer shall prescribe, not exceeding in all forty-seven hundred dollars. (Subdivision 10, amended '17 c. 150 § 1)

15. OFFICE OF GAME AND FISH COMMISSION

Cited (126-110, 147+946).

16. OFFICE OF DAIRY AND FOOD COMMISSIONER

The dairy and food commissioner shall receive a salary of three thousand dollars (\$3,000.00) per annum, and shall be allowed the expenses necessarily incurred by him in the discharge of his duties. He may appoint an assistant commissioner at a salary of two thousand dollars (\$2,000.00) per annum; a secretary at a salary of eighteen hundred dollars (\$1,800.00) per annum; one chemist at a salary of twenty-six hundred dollars (\$2,600.00) per annum; three assistant chemists, not to exceed twelve hundred dollars (\$1,200.00) each; one clerk, not to exceed eleven hundred and forty dollars (\$1,140.00); one clerk, not to exceed ten hundred and twenty dollars (\$1,020.00); three clerks, not to exceed nine hundred and sixty dollars (\$960.00) each; two stenographers, not to exceed ten hundred and eighty dollars (\$1,080.00) each; three inspectors, not to exceed nine hundred dollars (\$900.00) each; six inspectors, not to exceed twelve hundred dollars (\$1,200.00) each; eight inspectors, not to exceed fifteen hundred dollars (\$1,500.00) each; three inspectors, not to exceed eighteen hundred dollars (\$1,800.00) each, one of whom shall be the food inspector in charge of canneries. The expenses necessarily incurred by such subordinates shall be allowed and paid in addition to salary. He may employ necessary legal counsel. The expense properly incurred by him and his appointees shall be paid by warrants of the state auditor upon itemized accounts thereof approved by him or his assistant. The total expenses of the office, including salaries and compensation of all employes, shall not exceed in any fiscal year the appropriation made therefor. The provisions of this section shall not be construed in any way to repeal the provisions of Chapter 300 of the Laws of 1905 [3635-3639]. ('13 c. 400 § 1 subd. 16, amended '15 c. 247 § 1)

[297—]1. Deputy clerk of supreme court—Assistant—Salaries—The salary of the deputy clerk of the supreme court shall be two thousand five hundred dollars (\$2,500.00) per annum. The clerk of the supreme court is hereby

authorized to appoint an additional assistant in his office at a salary not to exceed nine hundred dollars (\$900.00) per annum. ('15 c. 163 § 1)

[297—]2. **Custodian of public documents—Salary**—The yearly salary of the custodian of public documents in the office of the secretary of state, shall be fifteen hundred (1500) dollars, per annum. ('15 c. 162 § 1)

CHAPTER 6

ELECTIONS

298. **General, when held—What officers chosen—Presidential electors—**

1915 c. 168, amending §§ 809, 810, post, providing that clerks of the district court elected in 1912 shall hold over to January, 1919, and that their successors shall be elected in November, 1918, held violative of Const. art. 6 § 13, and art. 7 § 9 (132-426, 157+652). Clerks of Courts, ⇨7.

300. **Term of office, when it begins—**

Cited (132-426, 157+652), holding that 1915 c. 168, amending §§ 809, 810, post, by providing that clerks of the district court elected in 1912 should hold over until January, 1919, and that their successors should be elected in November, 1918, was violative of Const. art. 6 § 13, and art. 7 § 9. Clerks of Courts, ⇨7.

305. **Special elections, when and how called and conducted**—Whenever any vacancy occurs in any office, the filling of which is not otherwise provided for, the governor, within ten days after he is informed of such vacancy, shall issue a proclamation directing a special election to be held, at a time therein specified not more than twenty days from the date thereof, to fill such office. One copy of such proclamation shall be mailed to the auditor of each county wherein such special election is to be held. But if the vacancy occurs in the office of representative in congress, or member of the legislature, and there be no session of the congress or legislature between the happening thereof and the next general election the vacancy shall be filled at such general election. Such special election shall be called, held and conducted, and the returns thereof made and canvassed in the same manner as in the case of general elections; and within fifteen days thereafter the auditor shall transmit a statement of the vote cast thereat to the secretary of state. (Amended '15 c. 167 § 1)

Section 17 repeals §§ 302, 516, 517, 518 G. S. 1913.

Section 18 repeals inconsistent acts, etc.

307. **Same—Candidates, how nominated, etc.**—That whenever a special election shall be ordered in any city of this state, having a population of more than ten thousand inhabitants and less than twenty thousand inhabitants, to fill any vacancy in the offices of such city, and the charter of such city shall require such special election to be ordered and held within ten days after such vacancies shall occur, candidates for election at such special election shall not be required to be nominated at a primary election. Candidates for election at such special election may be nominated by delegate conventions called and held in accordance with the laws of this state, relative to the nomination by conventions held to nominate candidates for election at a special election. Candidates for election at such special election may also be nominated by certificates in the manner provided by law relating to nominations by petition or certificates of voters. Provided, however, that all certificates of nomination of candidates for election at such special elections shall be filed with, and the nomination fee fixed by law paid to the city clerk of such city on or prior to the third day before the day appointed for holding such special election.

Whenever a special election shall be ordered in any city of the first class in this State not operating under a home rule charter, to fill any vacancy in the offices of such city, and the charter of such city shall not require such special election to be ordered and held within ten (10) days after such vacancy shall occur, candidates for election at such special election shall be

nominated at a primary election held on the third day, exclusive of any intervening Sunday, before the day appointed for such special election, at the time and places provided under section 309, General Statutes 1913 for the meeting and attendance of the Judges of election; and at such time and places there shall be held a primary election for the purpose of selecting two candidates to be voted for at the special election held to fill such vacancy.

The returns of such primary election shall be returned to the city clerk of such city, and shall be canvassed on the next day (not a Sunday or legal holiday), following such primary election, by a canvassing board consisting of the city clerk of such city, the chief accounting officer of such city and the city treasurer of such city.

Such canvassing board shall meet and canvass the returns and determine the result of such primary election on such day provided for their meeting; and shall forthwith certify in writing the result of such canvass to the city clerk of such city, who shall file the same and forthwith, in writing, notify the successful candidates of their nomination.

In the event that any of said officers above named to act on such canvassing board is a candidate for the office so to be filled, or is for any reason unable to act on such canvassing board, the chief executive officer of such city shall designate and appoint another officer of such city as a member of such canvassing board, in place of the officer named who is unable to act.

The action of a majority of such canvassing board, in making such canvass shall be legal and sufficient.

The city clerk of such city shall give fifteen (15) days notice of the time and places of holding such special election, and at the same time shall give notice of such primary election, designating the officers to be elected.

Notice of both said primary election and special election may be given in one and the same notice, but no defect in such notice or failure to give such notice shall invalidate any election.

All candidates for nomination at such primary election must file their affidavit for such nomination, and pay their fee therefor, in the same manner as provided in the law governing primary elections, except only that such filing shall be made with, and such fee paid to, the city clerk of such city, instead of the county auditor; and such filing must be made, and the fee therefor paid, not later than the fifth day preceding the primary election.

The two persons receiving the highest number of votes at such primary election shall be declared the nominees, and their names shall be placed on the ballot to be used at the special election, and no other names of candidates shall appear on the ballot to be used at such special election except the names of the two candidates receiving the highest number of votes at such primary election; Provided, however, that in the event that not more than two persons file as candidates for nomination for the office to be filled at such special election, then, and in such event, no primary election shall be held, but the two persons so filing shall be considered and shall be the nominees for such office, and their names, and their names only, shall be placed on the ballot, to be voted on at said special election for the office so to be filled.

At the primary election so to be held to select candidates to be voted on at such special election all persons entitled to vote at such special election shall be entitled to vote at such primary election, and except as herein otherwise provided, such primary election and all things pertaining thereto shall be in accordance with and controlled by the laws of the State of Minnesota in respect to primary elections, except only that wherever any act in connection with any regular primary election is required to be done by the county auditor, all such acts in connection with a special primary election shall be done by the city clerk of such city. (Amended '17 c. 26 § 1)

318. Pink ballots for constitutional and other questions—

Statement of proposed amendment to constitution (see 127-521, 149+1069).

327. Same—Written names—Party precedence—Identical surnames—

Like squares shall be placed at the right of the blank lines, and on such lines the voter may write the names of persons for whom he desires to vote whose names are not printed, and in the squares opposite the same he may make

marks as in the case of printed names. The first name printed for each office, or group of names if more than one is to be voted for for the same office, shall be that of the candidate of the political party which at the last preceding general election polled the largest number of votes, the same to be determined by the average vote received by such of its candidates as were not endorsed by any other party; and, in case all of the state candidates of any political party were indorsed or renominated by another party, the position of the candidates of either such nominating or endorsing party shall be determined by taking the average vote of its candidates at the last preceding election wherein they were not so endorsed. In like manner the second and succeeding lines shall be filled with the names of candidates of the other political parties receiving respectively the highest number of votes.

When the surnames of two or more candidates for the same office are the same, each such candidate shall have added thereto not to exceed three words, indicating his occupation and residence, and upon such candidate furnishing to the officer preparing the official ballot such words, they shall be printed on the ballot with and as are the names of the candidates and immediately after his name. (Amended '15 c. 102 § 1)

The Duluth charter does not abrogate the provision of the general election law conferring upon a voter the right to vote for persons other than the regularly nominated candidates, whose names are printed on the ballot (125-407, 147-815, L. R. A. T915B, 401). Elections, ~~6~~159.

334. Rotation of names, when required—Whenever two or more persons are to be elected to the same office, the names of all candidates of the several political parties for such office and of all non-partisan candidates, shall be rotated on the ballots used in each election district in the manner provided for primary election ballots by Section 342, General Statutes 1913, and all the provisions of said Section shall be applicable to general election ballots so far as practicable; provided, that nothing in this section shall apply to the office of presidential elector. (Amended '15 c. 167 § 2)

Does not apply to names of two candidates for one office chosen at primary election under § 335 et seq. (121-463, 141+791). Elections, ~~6~~167.

NOMINATIONS BY DIRECT VOTE

335. Primary election—Time for holding—Notice—On the third Monday in June, preceding any general election and seven weeks preceding any city election in cities of the first and second class, held for the purpose of electing city officers only, an election of nominees, hereinafter designated as the "primary election," shall be held in each election district for the selection of party and other candidates for all elective offices within the state, to be filled at such election except officers of towns, villages and cities of the third and fourth class, and members of school, park and library boards, in cities having less than one hundred thousand (100,000) inhabitants, and except presidential electors and the office of county surveyor. Every town, city and village clerk shall give at least sixteen days' posted notice of the time and place of holding same, of the hours during which the polls will be open, and of the offices for which candidates are to be nominated. The day for such primary election shall be the first day of registration in all election districts, except in cities of the first class. (Amended '15 c. 76 § 1)

336. Political party defined—Nominations, how made—Non-partisan primary ballot—Certain candidates to run in classes—County surveyor—A political party, within the meaning of this chapter, is one which shall have maintained in the district or territorial division in question a party organization, and presented candidates for election at the last preceding general election one or more of which candidates shall have been voted for in each county within the state at such election and shall have received in the state not less than five (5) percentum of the total vote cast for all candidates at such election or whose members to a number equal to at least (5) percentum of the total number of votes cast at the preceding general election in the county where the application is made shall present to the county auditor a petition for a place on the primary election ballot. Candidates for office shall be

chosen at such primary election by voters of several political parties and not otherwise; provided, however, that the chief justice and the associate justices of the supreme court and judges of the district, probate and municipal courts and all members of the state legislature, and all elective county officers, and municipal officers in cities of the first and second class, shall be nominated upon separate non-partisan ballots, as hereinafter provided. Provided further that all qualified and duly registered voters may participate in the choosing of candidates for city office as provided for in the city charter of cities having home rule charters; the names of all candidates for nomination for the office of chief justice, associate justice of the supreme court, judges of the district court, probate and municipal courts and all members of the state legislature, and all elective county officers, and all municipal offices in cities of the first and second class, shall be placed upon a separate primary ballot hereinafter designated as "non-partisan primary ballot."

No party or other designation, except as above, shall be placed on such ballot except as herein provided, nor shall any candidate filing for nomination on said non-partisan primary ballot be permitted or required to state his party affiliation. All provisions of law relating to the nomination of party candidates as to the form of ballot, including rotation of names, the endorsement thereon, voting, marking ballots, counting, returning and canvassing results, shall apply to nomination of said officers except that the tally sheets and returns shall be made separately, and except that non-partisan offices shall not be classified on the ballot or otherwise. Each voter shall be entitled to vote a non-partisan primary ballot without reference to his party affiliation.

The two candidates for nomination for every such non-partisan office who shall receive the highest number of votes, ascertained as provided by this act, shall be declared the nominees and their names shall be placed upon the election ballot, without party designation, and when two or more persons are to be elected for the same office, at a general election running at large in a city, county, district or in this state, the non-partisan nominees to be placed upon the general election ballot shall be the number of candidates not exceeding twice the number of such persons to be elected for the same office which shall receive the highest number of votes at such primary election; provided that when only two persons file for the nomination for any non-partisan office, or not more than twice the number of persons to be elected to any non-partisan office file for the nomination thereof, their names shall not be placed upon the non-partisan primary ballot, but said persons shall be considered and shall be the nominees for such office and their names shall be placed upon the general election ballot as such non-partisan nominees. But nothing herein shall prevent the nomination of candidates by groups, individuals or so-called political parties which cannot be recognized as such, by certificate of voters to the number hereafter specified. The names of candidates nominated by certificates for offices hereinabove designated as non-partisan shall have no party or other designation on the certificate or on the election ballot.

The nomination of candidates for the office of county surveyor shall be made as follows:

On or before Tuesday, seven weeks preceding any general election, and not sooner than Tuesday, fourteen weeks preceding any general election, any person eligible and desirous of having his name placed upon the election ballot as a non-partisan candidate for the office of county surveyor shall file his affidavit with the county auditor of his county, stating his residence, that he is a qualified voter in such county, and the said office for which he desires to be a candidate.

The fee required for filing certificates of nomination as provided by law shall be paid at the time of filing such affidavit.

Such nominations may also be made upon petition by affidavit of not less than fifty and not more than one hundred electors of such county, substantially in the form hereinbefore provided, filed in the same manner and consented to in writing by the party so to be nominated. Provided, that such petitioners shall not be eligible to sign more than one petition for the same office. The persons so nominated shall have their names printed upon the official ballot

prepared for the ensuing general election without party designation, upon the payment of the fee as herein provided. (Amended '15 c. 167 § 3)

Cited (134-258, 159+1).

Designation of class in affidavit (119-159, 141+100; 119-161, 141+100).

This section is not unconstitutional as embracing more than one subject (125-238, 146+364). Statutes, ~~§~~107(5).

1913 c. 389 is not violative of Const. art. 4 § 27, requiring the subject of every law to be expressed in its title (125-238, 146+364). Statutes, ~~§~~125(5).

This section is not unconstitutional as special or class legislation (125-238, 146+364). Statutes, ~~§~~101(2).

1913 c. 389 is not unconstitutional because its subject-matter is not germane to the statutes amended (125-238, 146+364). Statutes, ~~§~~131.

Rotation of names—Rotation on general election ballot of names of two candidates for one office chosen at the primary is not required (121-463, 141+791). Elections, ~~§~~167.

337. Political party—Change of name—

Cited (134-258, 159+1).

338. Election districts for primary elections—

Cited (134-258, 159+1).

339. Names of candidates, when placed on primary ballot—Fees—Non-partisan ballot—

Cited (134-258, 159+1).

Designation of class in affidavit (119-159, 141+100; 119-161, 141+100).

Candidate for municipal judge under city charter—A candidate for nomination for judge of the municipal court of St. Paul need not file an affidavit of his candidacy with the county auditor; the manner of nominating elective officers provided by the city charter applying to such office (125-521, 145+746). Elections, ~~§~~126(1).

A layman who has filed the affidavit prescribed by this section and paid the requisite fee is not entitled to have his name placed on the primary ballot as candidate for district judge, he being disqualified to hold such office under Const. art. 6 § 6 (125-533, 147+425). Judges, ~~§~~4.

340. Order of filing—Fees, how disposed of—

Cited (134-258, 159+1).

341. Voting is to be by ballot—Sample ballot—Form of primary ballot—

All voting at a primary election shall be by ballot. On the nineteenth day before a primary election, the secretary of state shall certify to the auditors of the several counties the names of all nominees to be voted for within such counties whose certificates have been properly filed with him, and on the fourteenth day before such primary each auditor shall group all the non-partisan candidates and the candidates of each political party by themselves, and prepare for public inspection a non-partisan ballot and a separate sample ballot for each political party. The names shall be arranged alphabetically according to the surname, and each county auditor shall post the sample ballot in a conspicuous place in his office and give one week's published notice thereof in the official newspaper of his county. One sample ballot only of non-partisan candidates and of each political party, shall be printed for any county, and thereon shall be placed the names of all candidates to be voted for in such county. Each ballot shall be headed by the party name, the words "Primary Election Ballot," the names of the county and state, the facsimile of the official signature of the auditor preparing it. The non-partisan ballot shall be headed as provided in Section 336, General Statutes 1913. Otherwise, the ballots shall be arranged in the same general manner as the ballot used at general elections, with suitable divisions and explanatory notes. Only one form of sample ballot for each political party need be printed for any city and thereon shall be placed the names of all the candidates to be voted for in the entire city, those to be voted for in any single ward being indicated by the words and figures "First Ward" and so on. At the foot of the ballot shall be placed the heading "Ballot for Women," under which shall be placed the names of candidates to be voted for by women.

In city primary elections in cities having home rule charters sample primary election ballots shall be prepared carrying out the intent of said charters in said cities, placing all names of candidates for city office on one ballot in each city without any party designation whatever, if the charter so provide.

In such cities, except for the omitting of all party designation, the provisions of this section shall be followed as fully as practicable. (Amended '15 c. 167 § 4)

131-399, 155+628.

Cited (134-258, 159+1).

342. Preparation of ballots—Rotation of names—Cities having home rule charters—The auditor of each county in which said primary election is held shall have printed a sufficient number of separate primary election ballots, varied as may be necessary for the several districts and wards. Said primary election ballot shall be in the same general form as to size and kind of type to be used, as is provided for the general election ballot, so far as is practicable. The names of candidates under headings properly designating each official position, shall be rotated upon the ballot in the printing so that the names of all candidates for each office shall be so alternated on the ballots used in each election district that they shall appear thereon substantially an equal number of times at the top, at the bottom, and in each intermediate place, if any, of the list or group in which they belong.

The official charged with the preparation and distribution of such ballots shall prepare instructions to the printer for rotating, laying and tabbing such ballots, which shall first be approved by the legal advisor of said official before delivery to the printer. In computing the method for making the rotation of names the least common multiple of the number of names in each of the several groups of candidates shall be used and the number of changes made in the printer's forms in printing such ballots shall correspond with said multiple; provided, that groups of more than five candidates shall not be considered in making such computation, and such groups may vary sufficiently in rotating to conform to the rotation for groups of five or less. Before any printer is awarded any contract for printing such ballots he shall be required to furnish a good and sufficient bond in such sum as the official awarding such contract shall designate, which shall not be less than one thousand dollars nor more than five thousand dollars, conditioned that he will print such ballots in conformity with the law and such instructions. There shall be no printing on the back of the ballots, except the necessary ruled lines for the initials, or names of the judges with the proper official designation printed under such lines; provided, that all offices for which no candidate is to be voted for at such primary election shall be omitted from the ballot; provided, that in all city primary elections in cities having home rule charters the officers designated in such charters shall prepare primary ballots for such city elections as provided in said charters, and this section shall apply there only in so far as it does not conflict with the provisions of said charters. (Amended '15 c. 167 § 5)

Rotation on general election ballot of names of two candidates for one office chosen at primary is not required (121-463, 141+791). Elections, ~~§~~ 167.

345. Polling places—Peace officers—Ballot boxes—So far as they shall be applicable, all provisions of this chapter relating to the location and arrangement of polling places, peace officers, procuring registers, ballots, boxes, and other supplies, opening polling places, challengers, and gatekeepers, and in reference to returns, including return of ballots, used and unused, shall apply to primary elections; except that one ballot box shall be used for partisan ballots, one for non-partisan ballots and one for women. (Amended '15 c. 167 § 6)

347. Qualification of voters—Manner of voting—

Cited (134-258, 159+1).

348. Marking primary ballots—The voter shall designate his choice on the ballot by marking a cross (X) in the small square opposite the name of each candidate for whom he wishes to vote. If he shall mark more names than there are candidates to be nominated for any office, or if for any reason it be impossible to determine his choice for any office, his ballot shall not be counted for such office; but the rest of his ballot, if properly marked, shall be counted. No ballot shall be rejected for any technical error which does

not render it impossible to determine the voter's choice, even though such ballot be somewhat soiled or defaced. ('15 c. 167 § 7, repealing G. S. 1913 § 348, and substituting the above section bearing the same number)

Preferential system—The preferential system of voting provided by the Duluth charter, whereby first choice, second choice, and additional choice votes are permitted, and are counted in a manner therein provided, is violative of Const. art. 7 §§ 1, 6 (130-492, 153+953, L. R. A. 1916B, 931). Elections, ~~c~~15.

351. Canvass of votes—Canvass of votes on primary ballots shall be made in the same manner and by the same officers as is provided by chapter 6, of the Revised Laws of 1905, except as herein otherwise provided. The ballots shall be counted in the following manner: The election officers shall take the ballots from the boxes, count those cast for each political party and for non-partisan candidates, place them in separate piles and fasten together.

Such officer's tally sheets on which the count has been so entered shall be included in the returns of such election. The officers of election shall on blanks to be provided for that purpose make full and accurate returns of the votes cast for each candidate.

The officers shall seal the returns and return the same to the auditor in the manner and as provided by the primary and general election laws. (Amended '15 c. 167 § 8)

125-249, 146+733.

354. Reports of county canvassing board—Auditor to certify to the secretary of state.—The canvassing board shall prepare, sign and file with the county auditor the following report:

1. A separate statement of each political party of the names of all candidates thereof voted for at the primary election, with the number of votes received by each and for what office.

2. A separate statement of the names of the candidates of each political party who are nominated.

3. A statement of the whole number of votes registered and the number of ballots cast at such primary election, men and women separately.

4. A separate statement of the votes received by each of the non-partisan candidates and the names of the non-partisan candidates nominated.

Whenever two or more candidates receive an equal number of votes for the same nomination, the board shall determine the tie by lot. Upon completion of the canvass and on or before ten o'clock A. M. of the fourth day succeeding the canvass, the auditor shall certify to the secretary of state the vote, as shown by such report, for all candidates to be voted for in more than one county, and shall mail or deliver to each nominee to be voted for in his county alone, a notice of his nomination, and that his name will be placed upon the official ballot; provided, that in primary elections for city officers in cities having home rule charters said canvassing board shall file such statement as will show the persons nominated for each office under the provisions of said charter, with as complete details as are provided for in this section, omitting all party designation, if so provided in said charters. (Amended '15 c. 167 § 9)

355. Canvassing by state canvassing board—Secretary of state to certify to auditors, etc.—Rules for determining nominees—The state canvassing board, as constituted for canvassing the returns of general elections, shall open and canvass the returns of a primary election made to the secretary of state, at the usual place and hour of meeting, on the seventh day after such primary election. Upon the completion of the canvass, the secretary of state shall certify to the several auditors the names of the persons found to be nominated, and mail to each nominee a notice of his nomination.

1. The state, county and city boards of canvassers shall be guided by the following rules, except as herein otherwise provided:

(a) Any tie shall be decided by lot by the canvassers.

(b) The person receiving the highest vote at such primary election, as the candidate of any political party for an office shall be the nominee of that party for such office. Candidates on non-partisan ballots receiving the highest and next highest votes, shall be the nominees for the office for which they

are candidates; provided, however, that if the number of votes cast for any candidate or candidates of any party for any office at such primary election shall aggregate the number of votes equal to ten per cent or more of the average vote cast for state officers of that party at the last general election in the territory within which such candidates are to be voted for, then all candidates of that party within that territory shall be deemed to be the party nominees of such party; otherwise no candidates of that party within that territory shall be deemed nominated and in such case, such party candidates of such party may be nominated by petition as provided for in Secs. 213 to 216 inclusive, Revised Laws 1905 (371-374), and the candidates of any such party failing to receive such ten per cent of such vote shall be eligible for nomination under the terms of this provision. The term "State officers" as used in this act for the purpose of computing the average vote to determine the ten per cent vote as above provided shall be and is hereby defined to be the following officers: Governor, lieutenant governor, secretary of state, state treasurer and attorney general. (Amended '15 c. 167 § 10)

131-399, 155+628.

Necessity of separate canvassing of voters of different classes under charter of city of Duluth (125-417, 147+275). Elections, ¶241.

357. Review by courts—

Cited (133-65, 157+907).

132-426, 157+652.

The part of this section conferring original jurisdiction on the Supreme Court is not unconstitutional, as the remedy is not broader than mandamus, and is one of the remedial cases in which original jurisdiction may be conferred on the Supreme Court (125-249, 146+733). Courts, ¶206.

Where a canvassing board improperly refused to consider a return merely because it was unsealed, a right to contest the election held not an adequate remedy, preventing resort to the remedy given by this section. The fact that the city council, which acted as canvassing board, has adjourned, does not prevent proceedings under this section (125-249, 146+733). Elections, ¶154(4).

A proceeding may be maintained under this section to compel a city canvassing board to correct a palpable mistake of law or fact in excluding proper returns from consideration merely because the same were presented to them unsealed (125-249, 146+733). Elections, ¶126(7), 154(4).

Where a canvassing board improperly refused to consider a return, fair on its face and unimpeached, merely because it was unsealed, the rule forbidding collateral attack on the determination of judicial and quasi judicial bodies has no application to prevent a review under this section (125-249, 146+733). Elections, ¶154(4).

358. Contests for nomination—Any candidate at a primary election desiring to contest the nomination of another candidate for the same office shall proceed in the manner prescribed for general election contests, and the same proceedings shall be had, so far as practicable, as for such contests. (Amended '15 c. 167 § 11)

PRESIDENTIAL PRIMARIES AND NATIONAL CONVENTIONS

384-394. [Repealed.]

See 1917 c. 133, repealing 1913 c. 441, as amended by 1915 c. 872.

An affidavit under this section is sufficient where it follows the language of the statute, but omits the words "as expressed by the voters at such nominating election" (132-221, 156+116). Elections, ¶126(5).

The secretary of state properly refused to accept an affidavit of candidacy for presidential elector, where it contained an unnecessary statement of the candidate's choice for president: it being neither necessary nor expedient that more than what the law specifies be stated (132-221, 156+8). Elections, ¶126(5).

In view of this section, as amended by 1915 c. 372 § 1, the secretary of state properly refused to accept an affidavit of candidacy for delegate, where no one had filed a petition to become a candidate for president or vice president and the time for such filing had not expired (132-221, 156+8). Elections, ¶126(5).

See note under § 305.

GENERAL PROVISIONS

[395—]1. Limitation on time for nominations—

See post, § [536—]13.

398. Errors in printing ballots or certifying nominations—

127-521, 149+1069.

Where, at the expiration of the time for filing nominations for district judge at the primary election in June, there were but two vacancies, but subsequent to that date another vacancy was created by resignation, it was the duty of the county auditor to prepare the primary

election ballot so as to indicate that there were three vacancies to be filled at the November election (126-525, 147+426). Elections, ~~§~~126(5).

403. Posted notice of election—When and by whom given—

Cited and applied (123-48, 142+1042).

404. Place of election—The council of every municipality shall by ordinance or resolution, and any town may by vote, designate the place of holding the election in each district; otherwise the election shall be held as near as may be at the place where the preceding election was held, subject to change before the opening of the polls as provided by law; Provided, that in villages and in cities of the fourth class, now or hereafter having two or more precincts the council of such municipality may by ordinance or resolution provide for the holding of all elections in such village or city in some building centrally located therein and the voters of said village or city may vote at such place so designated irrespective of whether the voting place is actually located in their precinct or not; at such place so designated there shall be provided separate statutory voting facilities for each precinct, and the voting shall otherwise be conducted in the same manner as though the voting places were located in the respective precincts. (Amended '15 c. 51 § 1)

416. Residence of voters, how determined—

Cited (130-269, 153+520).

432. Who may vote in cities of first, second and third classes—

Mode of signing affidavit, and effect of want of qualification by corroborating witness to affidavit, to secure right of unregistered voter to vote at municipal election (125-417, 147+275). Elections, ~~§~~118.

434. Same—Qualified voter not registered may vote—Oath—

Cited (129-118, 151+911, Ann. Cas. 1916E, 407). Elections, ~~§~~227(1).

[434—]1. **Registration of voters not required in certain cities of fourth class—**That in all cities of the fourth class in the State of Minnesota operating under home rule charters, in which said charters there is no express provision made for holding a registration day or days for voters prior to the annual charter election, there shall not be had any registration day or days for voters prior to such election. ('15 c. 226 § 1)

435. Hours for opening and closing polling places in cities—In towns—

See § [435—]1.

[435—]1. **Hours for opening and closing polls in certain towns—**In any township wherein the town board before expiration of the time for giving the notice of election shall by resolution so direct, the polls shall be kept open at any general, primary or special election, from six o'clock in the forenoon until nine o'clock in the afternoon and in any townships in which such resolution shall have been adopted while in force the notice of election shall state the time for opening the polls, as contained in such resolution. ('17 c. 34 § 1)

[448—]1. **Challengers for non-partisan candidates—**The mayor of any city or the president of any village shall appoint challengers of illegal voters at elections in each precinct whenever such challengers, or any challenger, shall be petitioned for by the voters of any group supporting any non-partisan candidate or candidates, and the petition of such group shall be for only one person and signed by not less than one-fifth (1/5) of the legal voters of such precinct who have not signed any other petition for the appointment of a challenger; and said challengers so appointed shall be the first persons so petitioned for and they shall have all the rights and powers which the challengers representing parties have under the general election law at elections at which party candidates are voted for. ('15 c. 329 § 1)

460. Marking ballots—Rules—

The Duluth charter does not abrogate the provision of the general election law conferring upon a voter the right to vote for persons other than the regularly nominated candidates, whose names are printed on the ballot (125-407, 147+815, L. R. A. 1915B, 401). Elections, ~~§~~159.

The intention of the voter in making marks on his ballot which may serve as identification marks is immaterial; and the act of the voter in writing his own name or the name of another on his ballot will invalidate it (132-290, 156+125). Elections, ~~§~~194(3, 8).

Where a paster is used, and there is nothing to show that the voter intended to vote for a candidate other than the one named on the paster, the ballot should be counted for that candidate, though the X mark does not follow the name (129-359, 152+758). Elections, ~~§~~182.

Cited in dissenting opinion (131-287, 155+92), to holding of majority of court that illegally marked ballots are to be counted in determining whether a majority of the votes cast have favored the prohibition of the sale of liquor.

463. Proceedings when voter cannot read English, or is physically unable to mark ballot—

That a voter, without making oath that he is unable to mark his ballot, procures another to mark it for him, invalidates his ballot (125-417, 147+275). Elections, ~~§~~220.

491. Rules for counting marks on ballots—

131-303, 155+97.

In determining the voter's intention the court may examine the entire ballot, and if such intention can be clearly ascertained the ballot should be counted (129-359, 152+758). Elections, ~~§~~299(4).

Ballots containing an X mark in the space to the right of a candidate's name, and containing no name in the blank space below, but having an X mark opposite the blank space, should not be counted (129-359, 152+758). Elections, ~~§~~180(4).

Ballot marked X immediately to the left of the word "Yes," not in the square intended for that purpose, was correctly counted "Yes" (131-303, 155+97). Elections, ~~§~~180(4).

Ballot marked with a perpendicular line with an indelible pencil in the square opposite the word "Yes" was properly counted as an affirmative vote (131-303, 155+97). Elections, ~~§~~180(2).

Where there is but one person of a given name running for a certain office, the ballot for the given name only should be counted for that person, and if the name is misspelled, but the name inserted is idem sonans with the correct name, the ballot should be counted (129-359, 152+758). Elections, ~~§~~180(6).

Where a paster is used, and there is nothing to indicate that the voter intended to vote for a candidate other than the one named thereon, the ballot should be counted for that candidate, though the X mark does not follow the name (129-359, 152+758). Elections, ~~§~~180(4).

Where a paster is used, the name thereon is to be counted though it is not followed by the X mark (129-359, 152+758). Elections, ~~§~~180(4).

500. Disposal of ballots after canvass—As soon as practicable after the canvass has been completed and before the board separates or adjourns and in the presence of all the judges, the ballots cast shall be removed from the boxes and placed in envelopes of the same color as the ballots and of a size to hold the ballots of each box without folding. Heavy envelopes suitable for this purpose, reinforced with cloth at all folds, shall be furnished by the county auditor to each election precinct. After the ballots are in place, the envelopes shall be carefully sealed and each election judge shall write his name upon the envelope over the sealed part in such a way that the envelope cannot be opened without disturbing the continuity of the lines in the writing. The number of ballots in each envelope, the kind thereof, and the name of the election precinct shall also be plainly written upon the envelope. No unused ballots or returns shall be placed in the envelopes. (Amended '15 c. 167 § 12)

501. Return of ballots to county auditor—As soon as the ballots have been placed in their envelopes and properly sealed and one of the judges has been chosen to deliver election returns to the county auditor, the envelopes shall be delivered by such judge and he shall personally deliver, or by registered mail or express, send the same to the county auditor. If sent by registered mail or express the envelopes shall be securely wrapped in such a manner that such envelopes and the seals shall be properly protected. The county auditor shall file all envelopes containing ballots thus transmitted to him in his office and shall keep them in a safe place with seals unbroken, unless previously opened by proper authority for examination or recount, in which event the auditor shall cause the envelopes to be again securely sealed with the names of the persons making such inspection or recount endorsed thereon in the manner provided for endorsement by election judges; provided, that such envelopes may be opened by the county canvassing board if necessary to procure any election returns which may have inadvertently

been sealed up with said returns by the election judges, but such envelopes shall again be sealed in the manner herein provided. (Amended '15 c. 167 § 13)

On a contest, ballots held properly received in evidence, though some evidence was introduced that they had not been kept in a safe place, and had not at all times been in the possession of the lawful custodian, there being counter evidence that the ballots remained in the same condition as when cast. It was also held that, even if there was error in their admission, no prejudice resulted (131-303, 155+97). Elections, ¶255.

503. Form of returns—

125-249, 146+733.

504. Returns to be sealed and delivered—

125-249, 146+733.

505. Delivery of returns and unused ballots—

125-249, 146+733.

511. Informalities—

Cited (125-249, 146+733).

512. County canvassing board—

Probative effect of certificate of proper canvassing board declaring result of election is not overcome by evidence of part of tabulated statement of votes not inconsistent therewith (162+522). Elections, ¶295(1).

Certificate of proper canvassing board declaring result of election is prima facie evidence of such result, and puts on contestant burden of showing that person declared elected did not receive majority of legal votes (162+522). Elections, ¶292.

514. County canvassing board to declare persons elected—The board having completed its canvass, shall declare the person receiving the highest number of votes for each county office duly elected thereto. When such county constitutes or contains a senatorial or representative district, it shall declare the persons receiving the highest number of votes, respectively, for senator or representative, duly elected. In case of tie, the result shall be determined by lot by the canvassing board. (Amended '15 c. 167 § 14)

516-518. [Repealed.]

See note under § 305.

520. Statement of votes—Declared result—Such board shall open and canvass the certified copies of the statements made by the county canvassing boards, prepare therefrom a statement of the whole number of votes cast at such election for candidates for the several state offices, and for such candidates for state senator or representative as shall be voted upon in more than one county, the names of the persons receiving such votes and the number received by each, specifying the several counties in which they were cast. Such board shall subscribe and certify to the correctness of such statement, and within three days after such canvass declare the result. In case of tie vote for any state or legislative office, or for any other office, the result of which is to be certified by the state canvassing board, the election shall be determined by lot cast by such board. (Amended '15 c. 167 § 15)

525. Election contests for legislature—Notice—Bond—Any voter of a senatorial or representative district may contest the validity of the election of any person declared elected to the senate or house of representatives for such district, or his right to a seat therein, by causing to be served upon the contestee, within fifteen days after the completion of the final canvass, a written notice, specifying the points on which the contest will be made and naming two justices of the peace of such legislative district before whom depositions relative thereto will be taken, and the time and place thereof, which time shall not be later than forty days after the election. And shall execute and file with the clerk of the district court of the county wherein said contest is instituted, a bond in the penal sum of five hundred dollars (\$500.00) payable to the contestee conditioned to pay all the costs, disbursements, and attorney's fees that may be paid or incurred by the contestee in such contest, provided the contestee prevails therein, which bond shall be approved by the judge or one of the judges of the district court in which said contest was instituted. Such notice shall be served in the same manner as a summons in a

civil action, at least ten days before the time named therein for taking such depositions. (Amended '15 c. 369 § 1)

529. Contesting state and municipal elections—Notices—Trial—

Jurisdiction cannot be ousted—The public acquires an interest in the proceedings initiated by a petition and signers thereof cannot oust the jurisdiction of the court after service of the petition and the taking of judicial action thereon by withdrawing their names therefrom (161+513). Elections, ¶279.

Failure to appoint term for hearing does not oust jurisdiction (122-149, 142+15). Elections, ¶275; Intoxicating Liquors, ¶37.

Notice—While it is necessary for the notice of contest to show the contestant to be a voter, his qualification may be tacitly admitted, or proof thereof waived by the contestee proceeding without objection on that ground to try the contest on the merits (126-298, 148+276). Elections, ¶280.

In an election contest jurisdiction is conferred by the filing of a proper notice under this section and irregularity, if any, in the court signing the order directing the time and manner of service of the notice upon the contestees prior to the filing thereof is not fatal. Service of the notice by one of the contestants was valid (126-298, 148+276). Elections, ¶280.

Evidence—Integrity of ballots (122-138, 142+12). Elections, ¶293(1).

Where contestant bases his contest on fact that votes were cast by nonresidents, he must show by the best evidence available that enough such votes were cast for contestee to change result (162+522). Elections, ¶291.

In election contest where evidence was available to show for whom illegal votes were cast, and contestant made no attempt to produce it, inference is that it would not have changed result (162+522). Evidence, ¶75.

Having proven that the contestees voted without right, it is proper by competent evidence to ascertain how they voted, so as to purge the election of the illegal vote (126-298, 148+276). Elections, ¶293(3).

Change of venue—This section controls the matter of change of venue in election contests (126-404, 150+625). Elections, ¶277.

Proceedings—Pleading—The petition and notice of contest is governed by the rules of practice applicable to an ordinary complaint, and contestee must attack the same by demurrer or answer if he desires to object to the legal capacity of the contestants, otherwise he will be deemed to have waived the defect (161+513). Elections, ¶286, 287.

Tie vote—This section authorizes an election contest, though neither of the two opposing candidates for a county office could be declared elected by the canvassing board, because the returns indicated the same number of votes for each (129-301, 151+1102; 129-301, 152+639). Elections, ¶273.

Jurisdiction of contest, where canvassing board has been unable to declare either candidate elected on account of a tie vote. Equally divided court (129-301, 151+1102).

Partial recount—Where votes in part of precincts are not recounted, the official returns therein are to govern (122-138, 142+12). Elections, ¶299(4).

Deducting illegal votes pro rata—Purging election of illegal votes by deducting pro rata part of them from votes for each candidate is justifiable only when it is impossible to show for whom they were actually cast (162+522). Elections, ¶254.

530. Inspection of ballots on contest, whether for office or proposition submitted to vote—After a contest has been instituted, either party may have the ballots inspected before preparing for trial. The party applying for such inspection shall file with the clerk a verified petition, stating that he cannot properly prepare his case for trial without an inspection of such ballots, and thereupon the judge of said court shall appoint three persons, if for a county or municipal office, or other question submitted to popular vote in any county or municipality, one selected by each of the parties and a third by those two, by whom such inspection shall be made. If the contest relates to a state office, or to the declared result upon a constitutional amendment or other question submitted to popular vote throughout the state, a judge of said court shall issue an order directing that all ballots pertaining to such contest be forthwith transmitted to the secretary of state by the several county auditors of the state. Such ballots, together with the sealed envelopes in which they were returned by the election judges, shall be properly boxed and sealed before shipment. They shall be shipped by express and it shall be the duty of the transportation company having in charge the transportation of such ballots to properly safeguard the same from the time they are received until they are delivered to the secretary of state. The said order may be served upon the several county auditors by registered mail. Such order may be modified as to the most populous counties and provision made for inspecting the ballots of such counties at the county seats thereof. Before such order is issued the applicant therefor shall deposit with the secretary of state a sum of money sufficient to pay all expenses connected with

the transportation of such ballots. No compensation shall be allowed the county auditor for his services in preparing such ballots for shipment. In state contests, the judge of said court shall appoint as many sets of three persons as may be necessary to expeditiously count and inspect the ballots in the office of the secretary of state, or elsewhere. Such inspectors shall be selected in the same manner as for county or municipal contests. Contests for district judge, or other offices not specifically provided for herein, shall be conducted under this section, the procedure therefor to be fixed by the court. Inspection of ballots shall be conducted in the presence of the legal custodian of the ballots and the party applying therefor shall file with the clerk a bond in the sum of two hundred and fifty dollars if the contest be within a single county; otherwise such bonds shall be in a sum to be fixed by the court in its discretion, with two sureties, and conditioned that he will pay the costs and expenses of such in case he fails to maintain his contest. If the contestant prevails in his contest the cost shall be taxed against the contestee. In case either party neglects or refuses to name an inspector, he shall be named by the judge. The compensation of inspectors shall be the same as for referees, unless otherwise stipulated. Any court of proper jurisdiction may order the return of any ballots to the county from which they were sent, after inspection, if necessary to be used in any other contest proceeding. The secretary of state shall preserve any ballots in his possession until the next general election, unless otherwise directed by order of court. (Amended '15 c. 167 § 16)

In a contest for the office of town clerk, and a contest for the office of town supervisor, held, on the evidence and a construction of certain ballots, that in each contest the parties received an equal number of votes. (127-33, 148+593). Elections, § 180(1, 7).

531. Appeal to supreme court—Method of procedure—

Amendment of notice of appeal (122-138, 142+12). Elections, § 305(3).

Specification of points in notice of appeal (122-138, 142+12). Elections, § 305(4).

Review of determination as to integrity of ballots as evidence (122-138, 142+12). Elections, § 305(4).

Respondent is permitted in the appellate court to urge any fact appearing in the record which will support the judgment below (129-359, 152+758). Elections, § 305(7).

533. Defective ballots—

Cited (121-463, 141+791).

[ABSENT VOTERS]

[536—]1. **Absent voters—Right to vote at general election—**Any person entitled to vote at any general election who is absent on the day such general election is held, from the election district in which he is entitled to vote, may vote therein by having his ballot delivered by mail to the election judges of such district on the day of such general election, by complying with the provisions of this act, provided, however, that no person residing in a city of the first, second or third class shall be permitted to so vote, unless he has duly registered in said district prior to such election day. The words "general election" as used in this act shall be construed to include the election held in the several election districts on the first Tuesday after the first Monday in November in each even numbered year and also any city election, including cities of the first class operating under home rule charters, and any county option election, so-called, held under the provisions of chapter 23, Laws 1915, and any act or acts supplementary thereto or amendatory thereof, held in any county, but shall not include a primary election. ('17 c. 68 § 1, amended '17 c. 120 § 1)

1917 c. 68 § 14, repeals inconsistent acts, etc.

[536—]2. **Application for ballot—Oath—**At any time not more than thirty (30) or less than seven (7) days before the day of holding any general election, any person may make application in writing subscribed by him to the county auditor of the county in which he is a resident for ballots and envelopes, and at the time of making such application, he shall subscribe and swear to the oath hereinafter directed to be printed on the back of application for ballots. Such oath shall be taken before an officer authorized to administer oaths and the jurat thereof shall be authenticated with the official seal of such officer, if he have a seal.

If the applicant for ballots be a resident of a city of the first, second or third class, the application for ballots shall be in the following form:

APPLICATION FOR BALLOTS

"The undersigned, a duly qualified and registered voter of the precinct (in case a ward constitutes an election district strike out the word 'precinct') of the ward of the City of in the County of, State of Minnesota, residing at (here insert street and number) in said city, hereby makes application for the ballots to be voted upon in said election district at the next general election. Please mail said ballots and accompanying envelopes to me at (here insert postoffice address to which to be sent).

Dated, 191.....

.....
(Signature of Applicant)"

If the applicant for ballots be not a resident of a city of the first, second or third class, the application for ballots shall be in the following form:

"The undersigned, a duly qualified voter of the (here insert name of town, village or other description of the election district) residing at in the (town, village or city of the fourth class) hereby makes application for the ballots to be voted for in said district at the next general election. Please mail said ballots to me at (here insert postoffice address to which to be mailed).

Dated at, this day of, 191

.....
(Signature of Applicant)"

There shall be printed on the back of each of said forms the following:

"This is to certify that ballots were—mailed—delivered in person as per enclosed application, this day of, 19.....

.....
County Auditor.

Per
Deputy."

OATH

County of } ss.
State of }

I do swear that I am a citizen of the United States; that I am twenty-one years of age, and have been a resident of the State of Minnesota continuously during the six months last past; that I am an actual resident of the election district named in the within application; that on the day of, 19....., I will have resided therein for more than thirty (30) days; that I do not intend to abandon my residence in said district prior to the day of, 19.....; that at said time I will be a qualified voter in said district.

.....
(Signature of Applicant)

Subscribed and sworn to before me this day of, 19.....

.....
(Signature of officer)

.....
(Description of officer)

('17 c. 68 § 2)

[536—]3. Ballots to be printed and delivered to county auditor—The several officers charged by law with the preparation, printing, and distribution of ballots shall at least fifteen days before a general election, print and deliver to the county auditor a sufficient number of the ballots printed under their supervision respectively, to enable the auditor to comply with the provisions of this act. It shall be the duty of the county auditor to prepare and print the ballots prepared under his direction at least fifteen days before election ('17 c. 68 § 3)

SUPP.G.S.MINN.'17—4

[536—]4. Auditor to mail or deliver ballots to applicant—If an application is made either in person or by mail more than fifteen days before election, the auditor shall file the same and forthwith on the delivery to him of the ballots, shall mail to the applicant at the address specified in the application one each of the several ballots the applicant is entitled to vote upon at the next general election; also the envelopes hereinafter specified. If the application is made within fifteen days (but not within seven days) of the election, he shall forthwith upon receipt of such application, mail or deliver to the applicant, if he apply therefor in person, and fill out and sign the application blank specified in section 2 hereof [536—2], one each of the several ballots the applicant is entitled to vote upon at the next general election; also the envelopes hereinafter specified. ('17 c. 68 § 4)

[536—]5. Fees—Expenses—Assistants—The applicant for such ballots shall pay to the county auditor at the time he makes such application, a fee of thirty-five cents. The money so received by said county auditor shall be kept in a separate fund and shall be expended by said auditor in paying the expense of such extra clerical assistance as may be required for the performance by him of the duties imposed by this act; the cost of furnishing and printing the application blanks specified in Section 2 hereof [536—2]; the cost of furnishing and printing the envelopes and voters' certificate hereinafter specified; the cost of postage both in forwarding and for the return of the ballots as hereinafter specified and in delivering to the judges of election of the several districts in his county the applications after the same have been endorsed by him as hereinafter specified. Any surplus of the moneys so received shall be paid into the county treasury and credited to the general revenue fund.

The county auditor of each of the several counties is hereby authorized to employ such assistants, additional to those now authorized by law, as may be necessary to the carrying into effect of the provisions of this act, but the expense of such additional clerical assistance shall be paid only from the money derived from the fees aforesaid remaining after the payment of postage and the cost of envelopes and voters' certificates herein provided for. ('17 c. 68 § 5)

[536—]6. Return envelopes—Certificates—Directions to voter—The county auditor of each of the several counties shall mail or deliver to the applicant with the ballots two envelopes and a voter's certificate. One envelope shall be known as the "Return Envelope" and shall be sufficiently larger than the "Ballot Envelope" hereinafter described, to conveniently enclose and contain the "Ballot Envelope," hereinafter described. There shall be printed or written across the left hand end of said envelope by the Auditor, before delivery thereof to the applicant, the words:

"Return Envelope."

"Postmaster deliver on Election Day."

The auditor shall also cause said "Return Envelope" to be addressed to the "Judges of Election" in the election district in which the applicant has certified in his application he is entitled to vote, such address shall be in substantial conformity to one of the illustrations hereinafter set forth and as the facts may require, to wit:

"To the Judges of Election,
7th Precinct, Third Ward,
City of Minneapolis,
Hennepin County,
Minnesota."

"To the Judges of Election, Rosedale Town
.....
(Here insert name of postoffice nearest voting place)
Hennepin County,
Minnesota."

"To the Judges of Election, Village of Excelsior,
Excelsior,
Hennepin County,
Minnesota."

The auditor may vary any such form for addressing "Return Envelope" as the facts may require, but shall adopt such form of address as will best insure the prompt delivery of such envelope and contents to the judges of election on election day.

The county auditor shall also affix to said "Return Envelope" postage stamps sufficient in amount to pay the postage on said "Return Envelope," after the ballot, ballot envelope and voter's certificate herein prescribed have been enclosed therein, from any postoffice within the territorial limits of the United States, other than the over-sea possessions of the United States, to the place to which it is addressed. He shall also place thereon a ten cent special delivery stamp, or if a special delivery stamp be not obtainable, additional postage stamps aggregating in amount to ten cents, in which latter case he shall also write or stamp on the address side of such envelope in a conspicuous place the words "Special Delivery."

There shall be printed on the back of said "Return Envelope" a certificate which shall be substantially in the following form, to-wit:

"This is to certify that after marking and enveloping the enclosed ballots as set forth in the enclosed certificate by me attested, enclosed the said ballot envelope in this return envelope in my presence without opening the said ballot envelope or permitting me or any other person to know or learn how he had voted as to any candidate or proposition and that this return envelope was sealed in my presence and after being sealed was deposited in my presence in the United States Postoffice at without being opened.

Dated this day of, 19....

Attesting Witness."

The return envelope shall be so made as to open on the left hand end and the certificate above set forth shall be printed on the right hand three-fourths of the back of said envelope.

The auditor shall also furnish to the applicant with the ballots, a "Voter's Certificate" which certificate shall be substantially in the following form, where the applicant is a resident of a city of the first, second or third class:

VOTER'S CERTIFICATE

"The undersigned hereby certifies that he is a qualified and duly registered voter in the precinct (strike out the word 'Precinct' if the ward or wards constitute an election district), of the ward of the City of and that the ballots enclosed in the 'Ballot Envelope' herewith enclosed in the 'Return Envelope' was exhibited by me to the attesting witness named below before the same was marked by me and that thereafter I marked the same in the presence of said witness, but in such a way that neither he or any other person could see or learn for what candidates or propositions thereon I voted; that thereupon and in his presence I folded said ballots and without showing the same to any person, enclosed the same in the 'Ballot Envelope' and sealed said 'Ballot Envelope.'

Dated at this day of, 19....

Voter."

CERTIFICATE OF ATTESTING WITNESS

"I certify that I have read the foregoing certificate and know the contents thereof and that the same is true.

Dated at this day of, 19....

Attesting Witness.

(Here write name of office or official character such as postmaster, clerk of court, etc.)"

If the applicant is a resident of a town, village or city of the fourth class, the auditor shall furnish with the ballots a "Voter's Certificate" which shall be substantially in the following form, to-wit:

VOTER'S CERTIFICATE

"The undersigned hereby certifies that he is a qualified voter in the (here describe voting district, if more than one) of the (name of town, village or city of fourth class) County of, State of Minnesota; that the ballots enclosed in the 'Ballot Envelope' was exhibited by me to the attesting witness named below before the same was marked by me; that at the time I so exhibited the same to said attesting witness there were no cross marks opposite the names of any candidates, or propositions to be voted on; that thereafter I marked the same in the presence of said attesting witness, but in such a way that neither he or any other person could see or learn for what candidate or propositions thereon I voted; that thereupon in his presence I folded said ballots and without showing the same to any person, enclosed the same in the 'Ballot Envelope' and sealed said 'Ballot Envelope.'

Dated at, this day of, 191.....

 Voter."

CERTIFICATE OF ATTESTING WITNESS

"I hereby certify that I have read the foregoing certificate and know the contents thereof and that the same is true.

Dated at, this
 day of, 19.....

 Attesting Witness.

(Here write name of office or official character of attesting witness, such as postmaster, etc.)"

Printed on the back of the voter's certificate shall be the following directions to voters, to-wit:

DIRECTIONS TO VOTER

(a) You may mark and mail your ballot at any place within the United States other than Alaska and the island possessions of the United States.

(b) The ballot must be marked and sealed in the "Ballot Envelope" in the presence of an attesting witness, but in such a manner as to prevent such witness or any other person from knowing or learning how you have voted as to any candidate or proposition.

(c) After marking and enclosing ballot in the "Ballot Envelope" you and attesting witness must each sign your respective names to the "Voters Certificate" and "Certificate of Attesting Witness."

(d) Do not put "Voters Certificate" in "Ballot Envelope" but enclose same in "Return Envelope."

(e) Enclose "Ballot Envelope" and "Voters Certificate" in "Return Envelope," seal the latter, have attesting witness sign certificate on back of "Return Envelope" and then deposit same in the United States Post Office in presence of the attesting witness.

(f) The ballot may be marked and mailed at any time after you receive it from the county auditor; it should, however, be marked and mailed so as to arrive at your voting place on or before election day. If not there by that day it will not be counted.

(g) The attesting witness who signs the voters certificate must also sign the certificate on the back of the "Return Envelope."

(h) Any United States postmaster, assistant United States postmaster, or any county, village, or city officer having an official seal may be an attesting witness.

If a postmaster or assistant postmaster acts as attesting witness, his signature on the "Certificate of Attesting Witness" should be authenticated by the

cancellation stamp of their respective postoffices. If one of the other officers named as attesting witness his signature on the "Certificate of Attesting Witness" should be authenticated with his official seal. It is not necessary to thus authenticate the signature to the certificate on the back of the "Return Envelope."

(i) Remember that the officers above named are not bound to act as an attesting witness for you, but if they do, do so only as a favor.

(j) Fold each ballot separately before placing in "Ballot Envelope"; fold so that cross marks cannot be seen without unfolding, but so that fac simile signature of officer (secretary of state, county auditor, or city clerk) under whose direction the ballot is printed and appearing on the back of the ballot, can be seen without unfolding the ballot. Do not put your name, initials or any other identifying mark on the ballot or "Return Envelope." ('17 c. 68 § 6)

[536—]7. Ballots, how authenticated by auditor—Applications, to be preserved and delivered to officers—The county auditor on mailing or delivering to an applicant ballots as hereinbefore specified, shall sign or cause to be signed by his deputy, and dated the certificate printed on the back of the application for ballots and shall authenticate such certificate with his official seal. All applications shall be preserved by the auditor and arranged by him according to election districts and the initial letter of the surname of the applicant. At the time he delivers the state and county ballots to the town, village and city clerks within his county, he shall also deliver to the respective town, village and city clerks the applications theretofore received by him and endorsed by him. Such town, village and city clerks shall in turn deliver said applications so endorsed to the respective election judges of the several election precincts. ('17 c. 68 § 7)

[536—]8. Ballots, where marked, and mailed by voters—Attesting witnesses—Challenges—Any qualified voter of any election district of this state to whom ballots have been delivered by the county auditor, may mark and mail the ballots so delivered to him at any place within the territorial jurisdiction of the United States, exclusive of Alaska and the so-called island possessions of the United States, the same to be marked and mailed in the manner specified in the directions to voters, set forth in section 6 hereof [536—6], and before an attesting witness belonging to one of the classes specified in said directions to voters. At any time before the ballots are so deposited in the ballot boxes by the election judges, the vote of any absent voter may be challenged for any cause, and the election judges shall have all the power and authority given by law, to hear and determine the legality of such ballot. ('17 c. 68 § 8)

[536—]9. Ballots, how received, counted, canvassed and returned—The judges of election in the several election districts at a general election shall receive all ballots delivered to them on election day by officers or employés of the United States Postoffice department in due course of the business of that department and as herein provided, and deposit the same in the appropriate ballot box provided that they are satisfied that the person mailing the same is a duly qualified voter in such election district and entitled to vote therein at such election, provided further that the conditions precedent hereinafter set forth, exist. Ballots so deposited shall be counted, canvassed and returned in the same manner and shall be given the same force and effect as the votes of other duly qualified voters who vote in person.

Upon a "Return Envelope" being delivered to the judges of election they shall open the same in such a manner as not to cut or mutilate the contents or deface or damage the signature of the attesting witness on the outside thereof. They shall then take from the "Return Envelope" the "Voters Certificate" and "Certificate of Attesting Witness"; they shall compare the signature of the "Attesting Witness" on the outside of the "Return Envelope" with the signature on the certificate enclosed therein and shall also compare the signature on the "Voters Certificate" with the signature on the "Application for Ballots" delivered to them as provided for in section 7 hereof [536—7].

If the judges or a majority of them are satisfied that the signatures of the "Attesting Witness" on the outside of the "Return Envelope" is the genuine signature of the person that signed the "Certificate of Attesting Witness" enclosed in the "Return Envelope" and if the signature of such witness on said certificate shall be authenticated as prescribed in the "Direction to Voters" set forth in section 6 hereof [536—6], and if the judges or a majority of them shall be satisfied that the signatures of the voter subscribed to the "Voters Certificate" is the genuine signature of the person who made the "Application for Ballots," the judges, or one or more of them shall write the word "Received" on such "Ballot Envelope" and under such word his or their name or initials, provided that in cities of first, second or third class such ballot shall not be so marked unless the voter mailing in such ballot has been theretofore duly registered in such election district, nor shall said ballot be so marked with the word "Received" if it appears from the registration list that such voter has already voted at such general election, either in person or by mail. If the ballots are not received for the reason that the voter has failed to comply with the requirements hereinbefore set forth or has previously voted at such election, then "Ballot Envelope" shall be marked "Rejected" and placed in the "Return Envelope" with the "Voters Certificate" and placed with and returned to the county auditor with the unused ballots. No person who has voted by mail as herein provided shall be permitted to thereafter vote in person.

If the "Ballot Envelope" is marked with the word "Received" as hereinbefore provided, the judges in charge of the register shall make an appropriate notation on the register of voters indicating that the voter has voted by mail; this shall be done by placing the letters "V. M." in the appropriate column opposite the voter's name.

The "Ballot Envelope" marked "Received" as aforesaid shall be carefully kept by the judges until the closing of the polls on the election day, but before any of the ballot boxes are opened, at which time the said "Ballot Envelope" shall be opened and the ballots therein taken therefrom and deposited by the judges in the proper ballot box. If there be more than one ballot of any one kind enclosed in said "Ballot Envelope," then and in such case neither of such ballots of such kind shall be deposited in the ballot box, but all such kinds shall be placed with the spoiled ballots and returned as is provided for by law with reference to such spoiled ballots. The judges before depositing said ballots in the ballot boxes shall write their initials thereon in the same manner as is provided by law with reference to ballots delivered by them to voters voting in person. ('17 c. 68 § 9)

[536—]10. **City clerks to furnish postmasters lists of polling places**—It shall be the duty of the city clerk of every city having more than two voting precincts therein to furnish to the postmaster of said city, at least two days before the day on which a general election is held, a certified tabulated list of the polling places in each of the several voting districts of said city, describing the same by ward and precinct number and opposite each such description shall be set forth the respective location, by street and number, of such polling place. This for the guidance of postoffice employes in delivering the "Return Envelopes." ('17 c. 68 § 10)

[536—]11. **City clerks to furnish registration board with blank applications—Duty of board and auditor**—It shall be the duty of the city clerk of cities of the first, second and third class to furnish the Board of Registration in the several election districts of their respective cities with a suitable number of blank "Application for Ballots" first described in section 2 hereof [536—2].

The Board of Registration shall furnish a copy of such application blank to any voter applying therefor on any registration day.

The county auditor shall prepare and print a suitable number of blanks for the "Application for Ballots" last described in section 2 hereof [536—2] and deliver a copy thereof to any voter applying therefor. ('17 c. 68 § 11)

[536—]12. **Penalty for violation**—Any person who shall wilfully make or sign any false certificates specified herein; any person who shall wilfully

make any false or untrue statement in any "Application for Ballots"; any person who shall wilfully exhibit to any other person any ballot marked by him; any person who shall in any way wilfully do any act contrary to the terms and provisions of this act with intent to cast an illegal vote in any election district or to aid another in so doing shall be guilty of a felony. ('17 c. 68 § 12)

[536—]13. **Nominations to close within 30 days before general election etc.**—No nominations for any office shall be made, either by petition or otherwise within thirty days of the time of holding a general election, except nominations to fill a vacancy in a nomination previously made, or to nominate a candidate for an office in which a vacancy has occurred and for which no person is a candidate. ('17 c. 68 § 13)

[536—]14. **Application—Members of Minnesota National Guard when in service of United States**—Whenever the Minnesota National Guard, or a majority of any regiment thereof, on the day of a general election in this State, is outside of the State of Minnesota and in the service of the United States, the provisions of this act shall apply to the voting of the members thereof. ('16 c. 2 § 1)

[536—]15. **Same—Duties of county auditor**—The auditors of the several counties of this State are hereby directed and required; first: to ascertain at least twenty (20) days before any election to be held on the Tuesday after the first Monday of November in any even numbered year, and if any law be passed less than twenty (20) days before such election is to be held, then forthwith after notice of the passage of the law, and forthwith after the passage of this act, the name of every member of the Minnesota National Guard in the active service of the United States entitled to vote within any precinct within his county, and the place (including name, street number or other description of the election district) where such person is entitled to vote; and, second; To mail to the Secretary of State, not later than the evening of the second Monday before election, all such information as he then has, and also to mail the evening of the next day to said Secretary of State any other such information as he may gain during the next day, with relation to the residence, if any, of any members of the National Guard residing within his said county. Every county auditor shall exercise all possible diligence to obtain such information and to transmit the same to the Secretary of State. Each county auditor shall with the first aforesaid information send to the said Secretary of State two proper county ballots for each such member of the National Guard found to be a resident and voter of his county, and two proper city ballots for each such voter of any city within such county, which city ballots shall be furnished to said county auditor by the clerk of each said city eight days before such election. ('16 c. 2 § 2)

[536—]16. **Same—Duties of Adjutant General**—The Adjutant General of the State of Minnesota shall transmit to the Secretary of State at least one week before the date of such general election, all such relevant facts as the muster rolls of the Minnesota National Guard show relative to the names of members of such National Guard who are voters in the State of Minnesota and the residence of each, stated with as much detail as the muster rolls show. ('16 c. 2 § 3)

[536—]17. **Same—Duties of Secretary of State**—The Secretary of State shall forthwith, and at least five (5) days before the date of such general election in such state, prepare a list of the legal voters in each regiment of the National Guard, so outside the State and shall also furnish for each person named in said list all such ballots as that person might use in voting were he at the place of his residence; which ballots shall be furnished said Secretary of State by the Legal State, County or Municipal Custodians thereof, respectively; a small envelope, printed on the back with the following words: (No name of any person is to be put on this envelope).

Precinct
Ward
Village, City or Town
County

A blank affidavit, the body of which shall be as follows:

State of..... }
County of..... } ss.

..... being duly sworn says that he is a member of Company (or Battery) Regiment of Infantry or Artillery, Minnesota National Guard; that he is years old; that he is entitled to vote in the precinct, ward, (City, Village or Town) of County, Minnesota.

Subscribed and sworn to before me this day of November, 191...

..... Regiment, M. N. G.
(state official rank)

Also a larger envelope which shall contain the smaller envelope, ballots, and the blank affidavit; and upon this larger envelope shall be printed:

Voting papers of Company (or Battery) Regiment, M. N. G. or M. F. A., Residence: State County City Ward Precinct.....

The larger envelope with the contents hereinbefore indicated for each soldier of each regiment of the National Guard shall be delivered to a Voting Commissioner, to be appointed and hold office as hereinafter provided. ('16 c. 2 § 4)

[536—]18. Same—Duties of Governor—Voting commissioners—Duties—The Governor shall appoint one voting commissioner or more for each regiment of the National Guard, a majority of which is likely to be out of the State of Minnesota at the date of any such general election. The commissioner so appointed shall qualify and then obtain from the Secretary of State the large envelope and contents hereinabove described for each member of the regiment of the National Guard entitled to vote, for which he is appointed voting commissioner. He shall proceed to the place of location of the members of the regiment of the National Guard for which he has been appointed voting commissioner so as to reach said place at least by nine (9) o'clock of the day before the date of such general election and shall arrange for and attend to the distribution of the large envelopes and contents hereinbefore described to each of the soldiers of the National Guard to whom such envelopes respectively belong. On the day of such general election in Minnesota he shall arrange for and attend to the receiving back of the said envelopes, sealed, blanks on back properly filled, and shall provide for and attend to the transmittal of said envelopes and the contents to the Secretary of State, State of Minnesota, with all due speed, and shall deliver the same to the said Secretary of State. ('16 c. 2 § 5)

[536—]19. Same—Challengers—Powers and duties—The voting commissioner shall appoint one man to act as challenger selected from each company of his regiment of the Minnesota National Guard belonging to each political party represented in said company. Such challenger shall be selected by the voters of each political party in such company and each such challenger shall have the right to challenge any member of his company attempting to deliver to the voting commissioner the larger envelope and contents hereinbefore described on any ground which would disqualify the person so attempting to vote for voting in the precinct in which he is attempting to vote. If a challenge is interposed, the voting commissioner shall have the power given to the judges of election and shall proceed as provided by Sections 457 and 458 of the General Statutes of Minnesota 1913. When a challenge is interposed and allowed the voting commissioner shall state that fact on the end of the envelope of the challenged person and transmit all such envelopes separately to the Secretary of State. ('16 c. 2 § 6)

[536—]20. Same—Ballots, how marked and returned—The soldier who shall receive a large envelope containing the ballots, small envelope and the

affidavit blank, as aforesaid shall, prior to delivering the same back to the voting commissioner, examine the same carefully, mark the ballots as he would mark them were he present and voting physically in the polling place in the precinct in which he is entitled to vote, and he shall on the day of the date of such general election, at the place and between the hours fixed by the voting commissioner, deliver to him the large envelope duly sealed and endorsed, containing the affidavit, and the small envelope, sealed, with the ballots, one of each kind, properly marked, contained therein, and a description of the voter's precinct endorsed thereon, which small envelope shall not show the name or any identifying mark of the person who marked the ballots contained therein, but only, and on its back, the precinct where the soldier marking the ballots within is entitled to vote. In the larger envelope shall be (1) The sealed smaller envelope containing the votes; (2) The affidavit above referred to of his right to vote and membership in the National Guard. The said larger envelope, as well as the smaller envelope, shall be sealed by said soldier before delivery to the voting commissioner. ('16 c. 2 § 7)

[536—]21. **Same—Duties of Secretary of State**—As soon as the envelopes containing the affidavits and ballots of the members of the Minnesota National Guard shall have been delivered to the Secretary of State, he shall open the larger envelope, examine and file the affidavit of membership and residence, and transmit, unopened, the smaller envelope to the auditor of the county of affiant's residence as shown by the affidavit. ('16 c. 2 § 8)

[536—]22. **Same—Duties of county auditors—Canvass of ballots, etc.**—The county auditor of the county of the residence of the voting soldier whose ballots he receives, shall open the envelope and canvass the ballots as the ballots would have been canvassed by the regular canvassing board of the precinct of the voting soldier's residence, and shall file his canvass of said vote with the canvass of the vote of such precinct and present the same, with the vote of the precinct, to the county canvassers, or other proper canvassing board, who shall treat the same in all respects as a part of the precinct return. The county or municipal canvassing board, as the case may be, shall not close the canvass of any precinct in which any member of the National Guard resides until more than one week after the date of such general election unless the vote of each member of said National Guard residing in said county voting hereunder, shall have been sooner received and canvassed. ('16 c. 2 § 9)

[536—]23. **Same—Oaths—Who may vote—Substitute voting commissioner, etc.**—Any commissioned officer and the voting commissioners are hereby authorized to administer oaths to each and every member of the regiment of Minnesota National Guard with which such commissioned officers or voting commissioner is connected. The voting commissioner may vote the same as a member of said regiment. Any staff officer (not regimental) and members of Brigade Headquarters may vote with any regiment, and the members of detachments attached to a regiment will vote with that regiment. In case of the inability of an appointed commissioner to act, the commanding officer of the regiment may designate a member of the regiment as a substitute who shall have all the powers of the voting commissioner. Any legal voter qualified to vote under this act may swear in his vote as provided by law without complying with any registration act. The affidavit provided for by section 4, of this act shall be sufficient unless the voter be challenged. ('16 c. 2 § 10)

[536—]24. **Same—Fees—Assistants—Expenses, etc.**—The following fees shall be allowed to the several persons who are required by this act to perform services in connection with such voting of members of the National Guard, to-wit: County auditor: five cents for each name of a soldier so transmitted to the secretary of state and one dollar; also ten cents for each voter whose vote is canvassed. Adjutant General: Twenty-five dollars for entire services. Secretary of State: Twenty-five dollars for services before election and Twenty-five dollars for services after election. Voting Commissioners: Ten dollars per day for all time necessarily employed in the duties herein-

before assigned to them. The adjutant general, the secretary of state, the voting commissioners and the several county auditors and city clerks upon whom duties under this act are imposed are hereby authorized to employ such additional assistants and messengers as may be required for the performance by them of their respective duties under the provisions of this act; and the expenses therefore, as well as all charges for printing, stationery, postage, telegraph and telephone, messages, express and other necessary charges shall be paid,—as to the secretary of state, voting commissioners, and adjutant general, by the State; and as to county auditors and city clerks, by their respective counties and cities. Claims for such expense shall be presented, audited and paid in the same manner as other charges against the State, counties and cities, respectively. ('16 c. 2 § 11)

[536—]25. **Same—Voting for municipal officers**—Any municipality having a municipal election on any other day than the day of the general election in which any company of the Minnesota National Guard has been organized may avail itself of this law to the extent of having the members of such company vote for municipal officers in the manner prescribed in this law, provided such municipality shall adopt an ordinance to that effect and shall provide for the payment by such municipality of the expenses incident to the conducting of such election. When such proceedings are taken in the field as are in this act provided for, any voters of such municipality in other companies of the National Guard than that organized in such municipality but within distance to avail themselves of said voting, may do so. ('16 c. 2 § 12)

[536—]26. **Same—Act to be liberally construed**—This act shall be liberally construed for the purpose of enabling citizen soldiers of the State of Minnesota, entitled to vote therein, to vote with the same effect as they would vote were they bodily within the State of Minnesota, at the time of holding such election therein, to the end that they may not, through serving their country be disfranchised. ('16 c. 2 § 13)

[536—]27. **Same—Penalties**—Any officer herein mentioned who shall fail to perform the duties assigned to him by this act, faithfully, shall be guilty of a gross misdemeanor; and any person who shall reveal, disclose, or tell how any soldier voted, or shall interfere with any person attempting to vote according to this law shall be guilty of a felony. ('16 c. 2 § 14)

GARBO ELECTION SYSTEM

561. Partisan primary election ballot—Form—Duties of judges—

A candidate for municipal judge, under the choice provisions of the Duluth charter, which provision was held unconstitutional in *Brown v. Smallwood*, 153 N. W. 953, was not elected, though he received a plurality of first choice votes, notwithstanding the provision of the general election law that a plurality of votes shall elect (131-399, 155+628). Elections, ¶237.

The holding that a preferential election of municipal judge under the Duluth charter was unconstitutional did not affect officers elected under the preferential system, or their terms; no contest having been instituted or equivalent remedy sought (131-399, 155+628). Elections, ¶227(7).

CORRUPT PRACTICES

573. Campaign literature must bear names and addresses—

131-1, 154+442.

This section is valid (126-378, 148+293). Elections, ¶270.

A publication falsely imputing to a candidate disreputable private and official conduct is a violation of this section. The law cannot be evaded by framing the statement so as to avoid a direct assertion as to disreputable conduct. (129-160, 151+550). Elections, ¶317.

576. Treating or receiving entertainment prohibited—

This section is valid (126-378, 148+293). Elections, ¶270.

A candidate who, by word of mouth, solicits the vote of an elector, and at the same time dispenses liquor to such elector, violates this section, though the act be regarded as trivial in its nature and the extension of mere hospitality (161+513). Elections, ¶231.

579. Certain payments prohibited—Badges, etc.—Conveying to polls—

161+513.

This section is valid (126-378, 148+293). Elections, ¶270.

588. Promises of or to aid in appointment prohibited—Support of other candidates—

This section is valid (126-378, 148+293). Elections, ¶270.

592. Contributions by corporations prohibited—Penalties—

Libelous character of charge that candidate for office has backing of certain corporations as affected by this section, see (130-138, 153+258). Libel and Slander, ¶10(1).

599. Contest on ground of violation of act—

126-378, 148+293; note under § 604.

Who may contest—The contestants under this section must be voters qualified to participate in the selection of candidates of the party of which the contestee was the nominee (134-258, 159+1). Elections, ¶154(9).

Evidence held not to show that the number of contestants under this section were qualified voters, and the contest was properly dismissed by the court (134-258, 159+1). Elections, ¶154(10).

Materiality of violation—The provision giving the right of contest on the ground only of "serious and material violations of the act" does not mean that the court may disregard any of the provisions of the statute as not serious or material but that acts of a candidate which are immaterial or trifling shall not be deemed subject to the prohibitions of the statute. There is no constitutional objection to such provision (126-378, 148+293). Elections, ¶270, 271.

Violation of § 573 is ground of contest. In this case, held, that the false statements published were "deliberate, serious, and material" (129-160, 151+550). Elections, ¶231, 271.

Procedure—The petition and notice of contest are governed by the rules of practice applicable to an ordinary complaint, and if contestee desires to attack the same on the ground of legal incapacity of the contestants, he must proceed by demurrer or answer, or he will be deemed to have waived the objection (161+513). Elections, ¶286, 287.

Withdrawal of names from petition—After the service of a petition, and the taking of judicial action thereon, the jurisdiction of the court cannot be ousted by the withdrawal, by signers of the petition, of their names therefrom (161+513). Elections, ¶279.

600. Trial—Court to determine merits—

126-378, 148+293; note under § 604.

601. Contest, when and where commenced—

126-378, 148+293; note under § 604.

602. Disqualification of candidate, etc.—

131-1, 154+442.

603. One provision of act not to invalidate remainder—

In a provision of this kind the rule is that, if part of the statute is unconstitutional, the remaining portion must be sustained if enough is left to constitute an enforceable law (126-378, 148+293). Statutes, ¶64(2).

604. Criminal procedure—Conviction of violation of act—Judgment of forfeiture—Candidate for legislative office—

Sections 599, 600, and 601 make it clear that the legislative intent was to give the right of contest on the ground of violation of the corrupt practices act, though there may not have been any criminal prosecution or conviction (126-378, 148+293). Elections, ¶272.

PENAL PROVISIONS

612. Bribery before or at elections—

This section is valid (126-378, 148+293). Elections, ¶270.

631. Certain corporations not to contribute—Penalty—

Libelous character of imputation that candidate for office has the backing of certain corporations as affected by this section (see 130-138, 153+258). Libel and Slander, ¶10(1).

CHAPTER 7

COUNTIES AND COUNTY OFFICERS

CHANGE OF BOUNDARIES

632. Change—New counties—The boundaries of counties may be changed by taking territory from a county and attaching the same to an adjoining county, and new counties may be established out of territory out of one or more existing counties, as hereinafter provided; that no such new county shall contain less than four hundred (400) square miles, nor less than two thousand (2,000) inhabitants, nor shall it have an assessed valuation of less than four million dollars (\$4,000,000.00) and no existing county shall be reduced in area below four hundred (400) square miles, nor so as to contain less than two thousand (2,000) inhabitants, nor so as to have an assessed valuation of less than four million dollars (\$4,000,000.00);

Provided, however, that in existing counties having an area of more than thirty-five hundred (3,500) and less than six thousand (6,000) square miles, boundaries may be changed and new counties established having an assessed valuation of not less than three million dollars (\$3,000,000.00). (Amended '17 c. 359 § 1)

639. Effect of proclamation—

Where a new county is formed from an existing one, notice of expiration of redemption from a tax sale of lands in such territory must be issued by the auditor of the original county, and delivered for service to the sheriff of the new county and published therein, if publication be necessary, provided the taxes for which the sale was had were levied before the petition for the formation of the new county was filed (126-218, 148+273). Taxation, 6701.

CHANGING COUNTY SEATS

662. Canvass—Certificate—

Cited (131-287, 155+92) on the proposition as to whether in a local option election illegally marked ballots are to be counted in determining whether a majority of the votes cast have favored the measure submitted. Intoxicating Liquors, 635.

POWERS AND DUTIES

668. Powers—

Cited (161+210).

[668—]1. Certain counties authorized to construct branch railroad tracks—In all cases where county buildings, or buildings in which a county is interested with other counties, are situated upon land adjacent to or near a railway track, such county, to-wit: The county in which such buildings are located, may pay from the general revenue fund thereof, or from any money raised by such county in excess of its proportionate share for any such institution, the costs of procuring a right of way for and the building of a branch track suitable for the transportation thereon from said railway track to such buildings of any or all articles and commodities needed by said institution and of persons going to and from the same. ('15 c. 55 § 1)

670. Powers, how exercised—

Cited (161+210).

671. County buildings—

Right of sheriff to exclude county officers from building assigned to them by the county board, though the building was constructed for a jail and sheriff's residence (see 161+210). Counties, 6107. See, also, note under § 9334, post.

675. Proceedings on appeal—

The pleadings provided for by this section have no application to appeals taken under § 2876, relating to formation and change of school districts (135-439, 161+152). Schools and School Districts, 639.

COUNTY BOARD

679. Commissioner districts—Redistricting—Each county shall be divided into as many districts, numbered consecutively as it has members of the board. In all counties such districts shall be bounded by town, village or ward lines, shall be composed of contiguous territory and contain as nearly as practicable an equal population. Counties may be redistricted by the county board after each state or federal census; and when it appears that after a state or federal census thirty per cent or more of the population of any county is contained in one district, such county shall be re-districted by its county board or if it shall appear from the last census, federal or state, that thirty per cent of the population of any county is contained in one district, such county shall be re-districted by its county board.

Provided that the county board shall not have authority or jurisdiction to re-district a county unless said board shall cause at least three weeks published notice of its purpose to do so, stating the time and place of the meeting where the matter will be considered, to be published in the newspaper having the contract for publishing the delinquent tax notice for said county for the preceding year.

One commissioner shall be elected in each such district who at the time of the election shall be a resident thereof, and the person so elected shall be entitled to hold said office only while he remains a resident of said commissioner district. (Amended '17 c. 370 § 1)

Section 3 provides that the act shall not be construed as repealing or in any manner modifying the provisions of 1917 c. 177 (§ [679—]1).

[679—]1. Redistricting in certain counties—That the county board of any county in this state, now or hereafter having an area of over five thousand square miles, and now or hereafter containing a city of the first class, is hereby authorized to re-district any county commissioners' district or districts in such county, now or hereafter wholly included within any such city of the first class, so that any such commissioner's district shall include such number of election districts within such city, and such contiguous congressional townships or part of any township, not less than one-half thereof, as such county board shall determine; provided, however, that all such territory within such city and such township or townships included in any such commissioner's district shall be contiguous territory.

That the re-districting of any commissioner's district under the provisions of this act shall be governed by the statutes now applicable to the re-districting of such commissioners' districts, except as herein otherwise provided. ('17 c. 177 § 1)

See note under § 679.

680. Term of office—Bond in certain counties—

An appointee to fill a vacancy in the county board, in a county not newly organized, or in which the number of commissioners is not increased, holds only until the next election occurring after there is sufficient time to give the notice prescribed by law, and until a successor is elected and qualified; § 5727 governing the case, and not this section (129-359, 152+758). Counties, ~~c.~~ 43.

[683—]1. Counties having over 200,000 and not over 300,000 inhabitants—Election of commissioners—That in all counties in the State of Minnesota, now, or hereafter having a population of over two hundred thousand and not over three hundred thousand population, the county commissioners to which any such county is entitled by law, shall be elected at the general election for county officers to be held in the year A. D. 1918, and each four years thereafter, and their terms of office shall be for four years and until their successors are elected and qualified. ('15 c. 104 § 1)

Section 3 repeals inconsistent acts, etc.

[683—]2. Same—Present commissioners—The terms of office of all county commissioners now in office in any county embraced in Section one of this act [683—1] shall continue until their successors are elected at the

general election in the year 1918, and until such successors qualify as provided by law. ('15 c. 104 § 2)

684. Salaries—

Section 685 does not modify the provisions of this section as to compensation of county commissioners in counties having an assessed valuation of more than \$20,000,000 and not exceeding \$100,000,000, limiting such compensation to \$800 yearly salary and expenses for the whole board not exceeding \$1,200 per year (131-478, 155+752). Counties, ~~68~~39.

[684—]1. Salaries in counties having 300,000 inhabitants—That in all counties of this state now or hereafter having a population of 300,000 or more inhabitants, each member of the Board of County Commissioners shall receive an annual salary of two thousand dollars (\$2,000.00), payable in equal monthly installments as the salaries of other county officials are paid. Said salary shall be in full for all services upon the county or other boards and committees and all traveling and other expenses within the county. ('17 c. 94 § 1)

Section 2 repeals inconsistent acts, etc.

[684—]2. Salaries in counties having valuation of more than \$250,000,000 and area of more than 5,000 square miles—That in all counties of this state, now or hereafter having an assessed valuation of more than two hundred and fifty million dollars (\$250,000,000.00) and an area of more than five thousand (5000) square miles, each member of the Board of County Commissioners shall receive an annual salary of eighteen hundred dollars (\$1800.00), payable in equal monthly installments as the salaries of other county officials are paid, which salary shall be in lieu of all other charges and allowances against said county, except that such commissioners shall be allowed and paid in addition to said salaries their actual and necessary traveling expenses incurred and paid by them in the discharge of their official duties, not exceeding in one calendar year the sum of Three Hundred dollars (\$300.00) for each commissioner. Such traveling expenses shall be allowed by the county upon duly verified and itemized bills in the same manner as other claims against the county. ('15 c. 95 § 1)

Section 2 repeals inconsistent acts, etc.

[684—]3. Salaries in counties having assessed valuation of more than \$20,000,000 and less than \$100,000,000 and area of more than 2,500 square miles—In all counties of this state, now or hereafter having an assessed valuation of more than twenty million dollars, and less than one hundred million dollars, and an area of more than twenty-five hundred square miles, each member of the board of county commissioners shall receive an annual salary of fifteen hundred dollars (\$1500) payable in equal monthly installments as the salaries of other county officials are paid, which salary shall be in lieu of all other charges and allowances against said county, whether for services upon the county and other boards and committees or for traveling and other expenses or otherwise. ('17 c. 175 § 1)

Section 2 repeals inconsistent acts, etc.

[684—]4. Salaries in counties having not less than 45,000 nor more than 60,000 inhabitants and not less than 35 nor more than 45 townships—From and after the passage of this act the salary and compensation of county commissioners in any county in this state, now or hereafter having a population of not less than forty-five thousand nor more than sixty thousand, according to the last federal census, and consisting of not less than thirty-five nor more than forty-five congressional townships, shall be the sum of eight hundred (\$800.00) dollars per year to each commissioner of said county and in addition thereto each of said commissioners shall receive the sum of three (\$3.00) dollars per day for each and every day necessarily occupied in the discharge of their official duties while acting on any committee under direction of the board, and ten cents per mile each way for every mile necessarily traveled either in attending general or special meetings of the board or upon committee work, but the total amount in addition to said salary of eight hundred (\$800.00) dollars aforesaid allowed to any one commissioner, in any one year,

shall not exceed the sum of five hundred (\$500.00) dollars, provided, however, that the chairman of the county board of any such county shall receive in addition to the foregoing ten cents per mile each way for going to the county seat to sign warrants during recess of the board. ('17 c. 152 § 1)

Section 2 repeals inconsistent acts, etc.

[684—]5. **Salaries in counties having not less than 80 nor more than 100 townships and valuation of not less than \$6,000,000 nor more than \$8,000,000**—That in all counties having not less than eighty nor more than one hundred congressional townships and having an assessed valuation of not less than six million (\$6,000,000.00) dollars, and not more than eight million (\$8,000,000.00) dollars the several members of the county boards shall receive a salary of eight hundred (\$800.00) dollars per year to be paid in twelve equal monthly installments, which shall be in full for all services upon the county board and committees thereof. ('17 c. 489 § 1)

[684—]6. **Same—Expenses**—Each member of such county boards shall also receive his actual and necessary traveling expenses incurred in the performance of his official duties within his county, to be audited and allowed as other claims against the county. All claims for such expenses shall state clearly the nature of the services in which same were incurred, and the date of same, and all claims for expenditures amounting to one (\$1.00) dollar or more shall be accompanied by a receipt signed by the person to whom the money was paid.

All expenses incurred in connection with the construction of ditches shall be paid from the ditch fund. Each member shall keep an accurate account of the days and dates upon which ditch services are rendered, and for each such day the county revenue fund shall be reimbursed from the ditch fund in the sum of three (\$3.00) dollars, the transfer to be made by resolution of the board. ('17 c. 489 § 2)

[684—]7. **Salaries in counties having more than 75 and not less than 80 townships and valuation of more than \$5,500,000 and less than \$12,000,000**—In all counties of this state having more than 75 and less than 80 congressional townships of land and having an assessed valuation of more than five million five hundred thousand (\$5,500,000) dollars and less than twelve million (\$12,000,000) dollars, the several members of the county boards shall receive an annual salary of seven hundred (\$700.00) dollars, to be paid in 12 equal monthly installments, which shall be in full for all services upon the county board or other boards and committees. ('17 c. 114 § 1)

[684—]8. **Same—Expenses**—Each member of such county board shall also receive his actual and necessary traveling expenses incurred in the performance of his official duties within his county, to be audited and allowed as other claims against the county. ('17 c. 114 § 2)

[684—]9. **Same—Total expense, etc.**—The total aggregate amount of the traveling expenses of all of the county commissioners of any such county which may be so allowed and paid shall not exceed twelve hundred dollars (\$1,200.00) in any one year.

When a member of the county board furnishes his own conveyance for necessary travel in the discharge of his official duties, he shall be entitled to charge at the rate of 3c per mile therefor. ('17 c. 114 § 3)

[684—]10. **Salaries in counties having not less than 35 nor more than 40 townships and valuation of not less than \$14,000,000 nor more than \$20,000,000**—That in all counties having not less than thirty-five nor more than forty congressional townships, and having an assessed valuation of not less than fourteen million and not more than twenty million dollars, the several members of the county boards shall receive a salary of five hundred (\$500.00) dollars per year, to be paid in twelve equal monthly installments, which shall be in full for all services upon the county board; and each member of such county board shall also receive three dollars (\$3.00) per day for each and every day necessarily occupied by him in the discharge of his official duties

while acting on any committee under the direction of the board, and ten cents per mile each way for every mile necessarily traveled in attending such committee work, and shall also be entitled to mileage of ten cents per mile each way for every mile necessarily traveled for attending meetings of the board, not to exceed twelve meetings in any one year; and in addition the chairman of the county board shall receive ten cents per mile each way for going to the county seat to sign warrants during recess of the county board. ('15 c. 298 § 1, amended '17 c. 301 § 1)

[684—]11. **Salaries in counties having not less than 55 nor more than 57 townships and valuation of not less than \$5,000,000 nor more than \$10,000,000**—That in all counties having not less than fifty-five nor more than fifty-seven congressional townships, and having an assessed valuation of not less than five million and not more than ten million dollars, the several members of the county boards shall receive a salary of \$480.00 per year, to be paid in twelve equal monthly installments, which shall be in full for all services upon the county board or other boards and committees. ('15 c. 88 § 1)

[684—]12. **Same—Expenses**—Each member of such county boards shall also receive his actual and necessary traveling expenses incurred in the performance of his official duties within his county, to be audited and allowed as other claims against the county. All claims for such expenses shall state clearly the nature of the service in which same were incurred and the date of same, and all claims for expenditures amounting to one dollar or more shall be accompanied by a receipt signed by the person to whom the money was paid.

All expenses incurred in connection with the construction of ditches shall be paid from the ditch fund. Each member shall keep an accurate account of the days and dates upon which ditch services are rendered and for each such day the county revenue fund shall be reimbursed from the ditch fund in the sum of three dollars, the transfer to be made by resolution of the board. ('15 c. 88 § 2)

[684—]13. **Salaries in counties having not less than 35 nor more than 40 townships and valuation of not less than \$14,000,000 nor more than \$16,000,000**—That in all counties having not less than thirty-five nor more than forty congressional townships, and having an assessed valuation of not less than fourteen million and not more than sixteen million dollars, the several members of the county boards shall receive a salary of \$500.00 per year, to be paid in twelve equal monthly installments, which shall be in full for all services upon the county board; and each member of such county board shall also receive three dollars (\$3.00) per day for each and every day necessarily occupied by him in the discharge of his official duties while acting on any committee under the direction of the board, and ten cents per mile each way for every mile necessarily traveled in attending such committee work, and shall also be entitled to mileage of ten cents per mile each way for every mile necessarily traveled for attending meetings of the board, not to exceed twelve meetings in any one year; and in addition the chairman of the county board shall receive ten cents per mile each way for going to the county seat to sign warrants during recess of the county board.¹ ('15 c. 298 § 1)

[684—]14. **Salaries in counties having more than 45,000 and not more than 75,000 inhabitants and area of not less than 60 townships**—That in all counties of the state now or hereafter having a population of more than forty-five thousand (45,000) inhabitants, and not exceeding seventy-five thousand (75,000) inhabitants, and having an area of not less than sixty congressional townships, each member of the county board shall receive for his services an annual salary of two hundred and fifty dollars (\$250) and such additional compensation as is provided for in Section 685, General Statutes of Minnesota for 1913. ('15 c. 85 § 1)

[684—]15. **Salaries in counties having not less than 50 nor more than 70 townships and valuation of not more than \$3,000,000**—In each county of this state now or hereafter containing not less than fifty and not more than sev-

¹ Amended by 1917, c. 301, § 1. See ante, § 684[10].

enty congressional townships, and having at any time an assessed valuation of not more than three million dollars, exclusive of money and credits as finally equalized by the state tax commission, each year, each county commissioner of such county shall receive an annual salary of three hundred dollars, payable monthly out of the county treasury, and in addition thereto each commissioner shall receive three dollars per day for each and every day necessarily occupied in the discharge of his official duties while acting on any committee under the direction of the county board, and ten cents per mile each way for every mile necessarily travelled in attending such committee work, and shall also be entitled to mileage of ten cents per mile each way for every mile necessarily travelled in attending meetings of the board, not to exceed twelve meetings in any one year. In addition to the foregoing compensation, the chairman of the county board shall receive ten cents per mile each way for going to the county seat to sign warrants during any recess of the county board. ('17 c. 275 § 1)

[684—]16. **Same—Application of act—**This act shall not apply to any county where the salary of the county commissioners is now fixed by a special law. ('17 c. 275 § 2)

685. Compensation and mileage in counties having less than 75,000 inhabitants—

A county commissioner in attending board meetings is entitled to compute mileage for the distance "necessarily traveled" by the usual traveled route from the place of residence to the county seat (134-346, 159+791). Counties, ~~46~~.

This section does not modify the express provisions of § 684, fixing the compensation of county commissioners in counties having an assessed valuation of more than \$20,000,000, but not exceeding \$100,000,000, limiting such compensation to \$800 yearly salary, and expenses not exceeding \$1,200 for all the members of the board (131-478, 155+752). Counties, ~~39~~.

687. Vacancies filled by board—

Where a county superintendent of schools was defeated for re-election, and contested the election of her opponent on the ground of his violation of the corrupt practices act, and, contestee prevailing on the contest in the trial court, contestant surrendered the office to contestee, who qualified and entered upon the duties of the office, but thereafter, on appeal, contestee was ousted, and resigned, there was a vacancy which could be filled by appointment under this section, and contestee did not hold over (131-1, 154+442). Schools and School Districts, ~~48~~(3).

692. Offices and supplies for county officials—

A sheriff held to have no right to exclude county officers from a building constructed for a jail and sheriff's residence, but assigned to such county officers by the county board for the reason that there was no other county building (161+210). Counties, ~~107~~.

696. General powers of board— * * *

8. To appropriate to any county agricultural society of its county, which is a member of the State Agricultural Society, or to any farm improvement association organized by the citizens of two or more counties jointly for the purpose of advancing the agricultural interest of each of such counties, a sum of money not exceeding five hundred dollars, annually, provided, that in any county in which two county agricultural societies are members of the State Agricultural Society any appropriation so made shall be divided equally between them. (Subd. 8, amended '17 c. 347 § 1)

See 1915 c. 219, amending the same subdivision.

13. In counties having more than two hundred thousand population, to appropriate not to exceed five thousand dollars in each year for the improvement of navigable lakes lying wholly or partly within such county.

This is subd. 13 of § 438, R. L. 1905, which was amended by 1913 c. 94, so as to read as set forth in G. S. 1913 § 696 subd. 13. 1913 c. 94 was repealed by 1917 c. 198. See note under § [696—]1.

Cited (161+210).

[696—]1. **Improvement of lakes in counties having not less than 200,000 nor more than 275,000 inhabitants—**The board of county commissioners of any county in the state of Minnesota now or hereafter having a population of not less than 200,000 and not more than 275,000 is hereby authorized and empowered to appropriate and expend a sum not exceeding \$50,000 in each

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year for the improvement of navigable lakes lying wholly or partly within such county. ('17 c. 198 § 1)

Section 2 repeals 1913 c. 94. See note under § 696 subd. 13.

708. Same—Bond from hospital—Charges, etc.—

See §§ [708—]1, [708—]2.

[708—]1. Aid to hospitals in counties having 25,000 inhabitants or less—
The board of county commissioners in any county in this state containing twenty-five thousand inhabitants, or less, is hereby authorized to appropriate from the general revenue fund of such county a sum not exceeding Forty Thousand Dollars in any one year to aid in the maintenance or erection of a hospital within such county. ('15 c. 326 § 1)

See §§ 707, 708.

[708—]2. Same—Bond from hospital—Charges—Before any such appropriation shall be made in any county under the provisions of this act, the board of county commissioners of such county may, in their discretion, require a bond on the part of the authorities of such hospital in a sum of at least the amount of the appropriation with sureties to be approved by such board, conditioned that such hospital shall be operated in a first class manner for the year for which said appropriation is made, or for such further time as such board may require, and that the authorities of such hospital shall receive at such price or compensation as may be fixed and agreed upon by and between such board and the authorities of such hospital at or before the time of the giving of such bond, all patients who may be a charge or dependent upon such county. ('15 c. 326 § 2)

717. Tuberculosis sanatorium—Powers of board of county or boards of group of counties—How established—Submission to voters—Sanatorium fund—Taxes—Bonds—The board of county commissioners of any county in this state or the boards of county commissioners in any group of counties in this state shall have and are hereby granted and given power with the advice and approval of the advisory commission of the Minnesota Sanatorium for Consumptives to establish and maintain as hereinafter provided, a sanatorium for the treatment and care of persons affected with tuberculosis, provided that said power so granted shall be exercised as follows:

a. Such sanatorium may be established by a majority vote of the commissioners of such county or a majority vote of the commissioners of each such group of counties whenever and in cases where the amount of the cost of construction to be paid by such county or group of counties shall not exceed such sum as may be raised by a tax levy of not to exceed one mill on the dollar of the taxable property of any such county or group of counties.

b. When the cost of constructing said sanatorium shall exceed the amount specified in sub-division "a" thereof, or whenever it is necessary to issue the bonds of such county or any county in any such group of counties to defray the cost which such county or any of such counties are required to pay under the terms of this act, then and in all such cases the question of
(1) whether such sanatorium shall be established (and when necessary).
(2) Whether such bonds shall be issued to defray any county's portion of the cost thereof, shall be submitted to the voters of such county or, if more than one, to the voters of each of such counties requiring a bond issue, and the sanatorium shall not be established or bonds issued therefor unless a majority of the voters of such county, or, if more than one, of each such county voting thereon shall vote in favor of each proposition submitted to it or to them.

c. The board of county commissioners of any such county, or, if more than one, the board of county commissioners of any such counties shall have the power and authority in any case to submit the question to the voters of any such county or counties in the way and manner provided in this act and in the event that the cost which the county, or if more than one, the counties will be required to pay for the erection of such sanatorium under this act shall be less than an amount equal to the amount which can be raised in any such county or counties by a tax levy of one mill on the dollar of the

taxable property of each such county or group of counties and the commissioners of any such county or counties shall decide not to construct the same under the power herein contained, on a petition of not less than five per cent of the freeholders of such county or counties, such question shall be submitted to the voters of such county or group of counties and if a majority of the voters of such county or a majority of the voters of each county of such group of counties voting thereon in favor thereof then such sanatorium shall be erected hereunder and a tax levied if necessary to pay the cost which such county or counties are required to pay under this act, which tax shall be extended and collected as herein provided.

Provided, that any county or group of counties which has heretofore commenced proceedings to erect a sanatorium or taken any steps preliminary thereto may by a resolution of the board of county commissioners thereof, adopted by a majority vote of said board of county commissioners or each board of county commissioners, as the case may be, determine to proceed under the provisions of this act and may continue hereunder and complete such sanatorium and be entitled to all the provisions and benefits provided for in this act.

Provided, however, that the said sanatorium when so constructed shall in all respects conform to the requirements of this act.

The board of county commissioners of any such county, or the board of county commissioners of each of such group of counties, if more than one, erecting such sanatorium under the provisions of this act, may, by resolution, create a fund to be known as the "Sanatorium Fund," and such funds may be raised by taxation at the time of deciding to erect such sanatorium under this act or at any time subsequent thereto, or if submitted to the people at the first meeting of the board of county commissioners, after the people of said county or counties shall have voted to erect the same, and the amount so determined by said board to be raised by taxation shall be levied by the county auditor in addition to all other taxes authorized by law, and shall be extended on the tax lists and collected as other county taxes, and this provision shall be construed to vest in the county commissioners of such county or counties, as the case may be, power to levy a tax to pay interest and principal of any bonds authorized hereunder as the same shall come due and become payable, and the said tax shall be levied, extended and collected in the same way and manner as other county taxes are levied, extended and collected, and shall be used for no other purpose, provided that no institution established under this act shall have less than twenty beds.

The question as to the establishment and maintenance of the sanatorium, or issuance of bonds therefor, may be submitted at a general or special election; if at the general election the notices of such election shall state that the questions will be voted upon and the provisions for taking such votes shall be made upon the blue ballots furnished herefor, as in the case of other questions, and the result shall be canvassed and returned in like manner; if at a special election, such election shall be ordered by resolution of the county board and the procedure for, at and after such election shall be substantially and as far as applicable the same as provided for in Section 399 to 403 inclusive, of the Revised Laws of 1905 (658-662), and the county auditor upon the passage of the necessary resolution, shall proceed as in said sections provided. If the proposition is to affect more than one county, then the necessary action shall be taken by the county board and county auditor of each county affected. If funds are to be borrowed from the state, the procedure outlined herein shall be sufficient for that purpose, instead of those provided for in Chapter 122, General Laws of 1907 (1879-1888).

If the bonding proposition should carry at any such election at which both propositions are voted upon, and the other proposition should fail to carry, no bonds shall be issued to provide money for the establishment or maintaining of a sanatorium until at some future election at which the question is properly submitted, and a majority of the votes cast upon the question shall have been in favor of the establishing and maintaining of such sanatorium. Where more than one county is involved the result of the vote on

the question or questions submitted in each of said counties shall be certified by the county auditor thereof to the county auditors of the other counties interested.

The amount of taxes to be raised in any one year in any one county for the construction of any such sanatorium hereunder, shall never exceed an amount equal to the amount which may be raised by a tax levy of one mill on the dollar of taxable property in such county. (Amended '15 c. 270 § 1)

718. Same—County sanatorium commission—Powers—Superintendent—Nurses—Surplus of tax levy—Upon the decision to establish and maintain a tuberculosis sanatorium under this act, the county commissioners of any county shall appoint a commission consisting of three members, residents of the county, at least one of whom shall be a licensed physician. These members shall be chosen with reference to their special fitness for such office and the appointment of said licensed physician before becoming effective shall be approved by the state board of health. Under the first appointment one member shall be chosen to hold office for one year, one for two years and one for three years, all from the first Monday of the next July following such appointment, and thereafter one member shall be chosen each year to serve for a period of three years commencing with the first Monday in July in each year respectively, and each appointee shall hold office until his successor is appointed and has qualified. This commission shall be known as the county sanatorium commission. Its members shall serve without compensation but shall be entitled to reimbursement for all necessary expenses incurred by them in connection with their official duties.

Said county sanatorium commission shall have full charge and control, except as hereinafter provided, of all moneys received for the credit of the tuberculosis sanatorium fund hereinafter described and full charge and control of the location, establishing, and maintenance of any sanatorium building constructed under this act and shall make such regulations concerning the same as may seem to it advisable, but no site shall be secured and no buildings erected or equipped without the approval and consent of the advisory commission of the Minnesota Sanatorium for Consumptives, and before final action is taken and plans and specifications shall be submitted to the state board of health for approval as provided by Section 2131, Revised Laws of 1905 (4640). The state board of control shall have full power and control over the construction and equipment of any such sanatorium whose establishment has been determined upon by said county sanatorium commission as hereinafter provided.

Said county sanatorium commission may when deemed necessary appoint and employ with the approval and consent of the advisory commission of the Minnesota Sanatorium for Consumptives a competent superintendent who shall employ other necessary help at a compensation to be determined by the county sanatorium commission. Said superintendent shall be the executive officer of the sanatorium and he shall act as secretary of the county sanatorium commission. One member of said commission shall be elected annually by the commission as its president.

The county sanatorium commission of a county or group of counties may authorize the superintendent of a sanatorium to employ a nurse or nurses to visit in their homes consumptives who have been discharged from such institution and who reside within such county or group of counties. Such nurse shall render monthly reports in duplicate to the superintendent of the sanatorium and to the state board of health. Said sanatorium commission may establish an open air school or preventorium for child patients in connection with the sanatorium with the consent and approval of the advisory commission of the Minnesota Sanatorium for Consumptives.

Said county sanatorium commission of a county or group of counties is hereby authorized, with the approval of the advisory commission of the Minnesota Sanatorium for Consumptives, to use any surplus of the tax levy made for the maintenance of a sanatorium, for building, purchasing, equipments, building additions, building cottages, making improvements and repairs. (Amended '15 c. 270 § 2)

719. Same—Counties may unite—Commission, how composed—Withdrawal from group—Two or more counties may unite in acquiring, establishing, equipping or maintaining such sanatorium and in such case said commission shall be composed in the first instance of two members chosen from each county in such group of the county commissioners of each such county, and after the site for the sanatorium has been selected and has received the approval of the advisory commission of the Minnesota Sanatorium for Consumptives such commission shall be increased by the addition of a third member chosen from the county in which said sanatorium is to be located, by the county commissioners thereof; under the first appointment one member from each county shall be chosen to hold office for two years and one for three years from the first Monday of the next July following such appointment, and the additional member thereafter chosen from the county in which said sanatorium is to be located shall be chosen to hold office for one year from the said first Monday of the next July, and thereafter the members chosen to succeed said first appointees at the expiration of their terms shall each hold office for the term of three years, and each appointee provided for in this section shall hold office until his successor is appointed and qualified.

In any case where a group of two or more counties have jointly acquired, established, equipped or maintained a sanatorium, and one or more counties in such group desires to separate from such group for the purpose of alone, or with another county or group of counties, establish or maintain separate sanatorium under this act, such county or counties desiring to withdraw from said group shall in writing, request permission of the remaining counties in such group to do so and to fix and determine the financial obligation of the petitioner and of the other remaining counties of the group. In the event that the majority of such remaining counties shall fail to consent to such withdrawal within 90 days of such request, or consenting fail to agree on said financial obligation, the county or counties desiring such separation shall through the county attorney make a petition setting forth facts showing that it would better serve the interests of all concerned that such county, either alone or with another group, carry on its work, which petition shall be presented to the district court of any county affected by said proceeding. Upon the presentation of such petition the court shall fix a time and place of hearing, and by order direct the other interested counties to appear not less than twenty days after the service of notice thereof on the several county auditors of the interested counties. At the time so fixed, or at any other time designated, the court, without a jury, shall hear said petition and such evidence as may be adduced by the parties, and, if the petition be granted, by its order detach the petitioner from the group to which it belonged, and may annex the same to another group, and may fix and determine the financial obligation of the petitioner with respect to the group of counties to which it was formerly joined, and also to the group of counties to which it may be annexed. (Amended '15 c. 270 § 3)

720. Same—Appropriation of funds—Bonds—Contribution of state—Duties of state board of control—Tax levy—Where counties unite—Disposition of moneys—A county or group of counties wishing to establish a sanatorium as indicated in Section one (717) shall through the board or boards of county commissioners appropriate one-half the necessary funds in apportioned amounts as hereafter provided for the establishment, construction and equipment of the same and may issue bonds therefor in the manner provided by law for the issuance by counties of bonds for other purposes. The state treasurer shall pay out of the funds hereafter provided under this act one-half the cost of the erection and equipment of each such sanatorium including cost of site, which payment shall be made in the manner provided by law for the payment of expense incurred by the state board of control in the erection and equipment of public buildings; provided, that the amount contributed by the state towards the cost of the erection and equipment of each such sanatorium including cost of site shall not exceed fifty thousand dollars. Whenever any such sanatorium has been erected and equipped said county sanatorium commission shall have full charge and control of the maintenance of the same,

but may confer with the state board of control with reference thereto or respecting the purchase of supplies therefor whenever it desires so to do, and said state board of control shall aid in the securing of favorable contracts for the purchase of supplies when so called upon. Said county sanatorium commission shall determine by resolution each year prior to July 1st, the amount of money necessary for the maintenance of such sanatorium during the following year and a certified copy of such resolution shall be forthwith forwarded to the board or boards of county commissioners, and such board or boards shall at the regular meeting in July include the properly approved and apportioned amount in the annual levy of county taxes. In no case shall the amount of such levy in any one year exceed one mill on the dollar of assessed valuation. For the maintenance of each free patient treated in the sanatorium, the sum of five dollars per week shall be paid to said county or group of counties by the state treasurer out of funds appropriated under this act, which payments shall be made monthly upon warrants of the state auditor, drawn upon the state treasurer, provided that the president and executive secretary of the advisory commission of the Minnesota Sanatorium for Consumptives certify that the institution has been properly conducted. Monies received by a county or counties from the state treasurer for the maintenance of free cases shall be placed to the credit of the sanatorium fund. In case two or more counties unite in a decision to establish a sanatorium, the county sanatorium commission shall apportion by resolution one-half the estimated total cost of site, erection and equipment and the estimated total cost of maintenance for the ensuing year between or among said counties, and designate the amount to be raised by each county, which said apportionment shall be based approximately upon the respective population of said counties as determined by the last previous federal or state census. When so apportioned said commission shall forward to the board of county commissioners of each county a certified copy of such resolution, and each county board shall then proceed to pay if it has funds available for that purpose or to make a tax levy for the amount apportioned to its county. All moneys collected or received for such sanatorium purposes except cost of site, erection and equipment, shall be deposited in the treasury of said county to the credit of the tuberculosis sanatorium funds, and shall not be used for any other purpose and shall be paid out in a manner provided by law for other county expenses by the proper officers of said county, upon the properly authenticated vouchers of the county sanatorium commission signed by the president and secretary thereof, and all moneys collected or received to be used toward the payment of the cost of site, erection and equipment of such sanatorium shall be sent by each county treasurer to the state treasurer to be placed to the credit of said sanatorium and shall be paid out in the manner as in this section provided for other payments toward cost of site, erection and equipment of said sanatorium. (Amended '15 c. 270 § 4)

[729—]1. Same—Refundment to county of sums erroneously paid to state treasurer—When any sum shall have been in whole or in part erroneously transmitted under the provisions of said chapter by any county to the State Treasurer, the county paying or transmitting the same shall be entitled to a refundment of the amount so erroneously paid and transmitted, and the Auditor of the State shall, upon proper certificate furnished him by the advisory commission of the Minnesota Sanatorium for Consumptives, draw his warrant upon the State Treasurer for the amount so certified as having been overpaid and in favor of the county entitled thereto. ('13 c. 500, amended '17 c. 45 § 1)

This section, to be known as § 13A, is added to 1913 c. 500 by 1917 c. 45.

[730—]1. Abandonment of sanatorium—Transfer of fund—That where two or more counties in the State have heretofore begun proceedings for the establishment and maintenance of a county tuberculosis sanatorium for said counties, and have adopted resolutions therefor, and one or more of said counties has by resolution as provided by law, levied the tax as said board is by law authorized to do for such purpose, and thereafter the establishment of said sanatorium has been wholly abandoned, any such county having by rea-

son of such levy any moneys, in the sanatorium fund may by a resolution adopted by a unanimous vote of its county board, transfer such moneys from the tuberculosis sanatorium fund to the road and bridge fund of said county, at any time, and such moneys shall thereafter become a part of said road and bridge fund, and become available after such transfer for use as a part of said road and bridge fund. ('17 c. 47 § 1)

[735—]1. **Cemetery associations established prior to 1857—Maintenance and improvement**—That the county board of any county in this state may appropriate to any cemetery association which was established prior to the year 1857 in such county, and in which cemetery such county owns lots, a sum of money not exceeding two hundred dollars (\$200.00) annually, for the maintenance or improvement of such cemetery. ('15 c. 150 § 1)

739. **Exhibits at state fair**—The board of county commissioners of any county in the state, for the purpose of assisting to maintain an exhibit of the products of said county at the Minnesota State Fair, is hereby authorized and empowered to appropriate out of the general revenue fund of said county such a sum of money as they may deem advisable not exceeding five hundred dollars (\$500.00) annually, exclusive of and in addition to such sums of money as may be received by said county as premiums or prizes at the state fair for that year. ('09 c. 26 § 1, amended '17 c. 139 § 1)

1909 c. 26 § 1 amended section 1 of 1907 c. 99 to read as set forth in G. S. 1913 § 739. 1917 c. 139 amends section 1 of 1909 c. 26, so as to read as set forth in the above section and the two sections next following.

[739—]1. **Same—Premiums and prizes**—All moneys derived from premiums or prizes for such county exhibit at said state fair shall be paid into the treasury of said county. ('09 c. 26 § 1, amended '17 c. 139 § 2)

[739—]2. **Same—Appropriations validated**—Any annual appropriation heretofore made by the county commissioners of any county for such county exhibit, which appropriation exclusive of such premiums or prizes for the state fair exhibit of said county for the year, did not exceed the sum of five hundred (\$500.00), is, together with the expenditure of said appropriation and premium money, hereby legalized and declared to be valid, provided, however, that the provisions of this act shall not affect any action or proceeding now pending in any court of this state. ('09 c. 26 § 1, amended '17 c. 139 § 3)

743, 744—

Sec §§ [744—]1, [744—]2, and note under § [744—]2.

[744—]1. **County fairs in certain counties**—That in all counties in this state now or hereafter having a population of one hundred fifty thousand and having not less than forty per cent of their area consisting of vacant and uncultivated lands, the county board may annually appropriate not to exceed two thousand (\$2,000.00) dollars to assist in the maintaining of a county fair, which fair shall be under the management and control of a county agricultural society. Such appropriation shall be made either to the treasurer of such society or to some other suitable person, but before such money is paid to such treasurer or other person, he shall file with the county auditor a satisfactory bond in double the sum of said appropriation, conditioned upon a faithful disbursing and accounting for all of said funds so appropriated. Said funds so appropriated shall be used solely for the purpose of obtaining, preparing and arranging exhibits and paying premiums to exhibitors. The treasurer or other person to whom said appropriation is paid shall within four months after the holding of any such aided annual fair, file with the county auditor his verified and detailed report showing the name and address of every person to whom any of said money was paid, together with the date of payment and a full description of the purposes for which the money was so paid and he shall attach thereto receipts and sub-vouchers for each payment so made and shall return to the county treasurer all of the unexpended portion thereof. After said report and receipts and sub-vouchers have been audited by the county board and found to be correct, they may by resolution

release said treasurer or other person and his sureties from all further liabilities under such bond. ('17 c. 311 § 1)

1917 c. 311 is entitled "An act to amend chapter 271 of the Laws of 1913," etc., although it does not expressly amend the same. See §§ 743, 744.

[744—]2. Same—Sites, buildings and race tracks—The county board in any such county may also annually appropriate such further sum as it may desire not exceeding \$7,500, for the purpose of procuring a suitable site and the erection of a suitable county building thereon, for the building or repairing of a race track and for grading and improving the grounds, to be used in connection with such county fair, but said site and said building and improvements shall be and remain the property of such county and such annual appropriation shall be used only for the purpose of so acquiring such site and building and grading and for the necessary care, repair, maintenance and upkeep thereof. ('13 c. 271, amended '17 c. 311 § 2)

[744—]3. Purchase of fair grounds and buildings in certain counties—The board of county commissioners of any county in this state having a population of three hundred fifty thousand (350,000) inhabitants, or more, may by unanimous vote appropriate out of the general revenue fund of such counties a sum not to exceed thirty thousand dollars (\$30,000.00) for the purpose of aiding in the purchase of county fair grounds and the erection of buildings on such fair grounds in such counties. ('17 c. 458 § 1)

[745—]1. Reimbursement of county agricultural society—Purchase of lands, etc.—Whenever any county agricultural society or officer thereof has heretofore contributed funds for the purchase or condemnation of lands used for county fair purposes and title to such lands has been conveyed to the county, the county board of any such county is hereby authorized and empowered to appropriate to such society or officer thereof making such contribution an amount equal to the moneys so contributed by it or such officer in acquiring such land, such appropriation not to exceed in any event, the sum of three thousand dollars (\$3,000.00). ('15 c. 140 § 1)

[745—]2. Same—Erecting building—Whenever any county agricultural society or officer thereof has heretofore contributed funds for the erecting of a building or buildings used for county fair purposes, and title to such buildings and the land upon which the same are situate has been conveyed to the county, the county board of any such county is hereby authorized and empowered to appropriate to such society or officer thereof making such contribution an amount equal to the moneys so contributed by it or such officer in erecting said buildings, such appropriation not to exceed in any event, the sum of four thousand dollars (\$4,000.00). ('17 c. 74 § 1)

[745—]3. Loaning money for purchase of seed and feed—Petition by free-holders—Power of county board—Authority is hereby granted to any county in the State of Minnesota to lend money to residents of such county for the purpose of purchasing seed and feed for teams whenever there has been a total or partial failure of crops in such county, by reason of hail, flood, drought, fire or other cause, where such residents own or hold under contract for deed, land ready to be cropped, but are unable to procure seed for planting such land and feed for their teams while doing such work and who are in imminent danger of losing their property. In such case, if not less than twenty-five (25) resident free-holders of said county before March first next following such crop failure, shall present to the county auditor of such county a petition signed by them asking that such county lend money to residents thereof suffering by reason of such crop failure, for the purpose of purchasing seed and feed, said auditor shall receive and file said petition and at once call a meeting of the county board to consider such petition and said county board shall on or before the second Monday in March next following, meet and consider said petition and may grant the prayer thereof and enter an order that said county lend from its general fund such sum as it deems necessary for said purpose, provided, that said amount shall not, with the existing indebtedness of said county, exceed the amount of indebtedness fixed by the laws of this State. ('17 c. 21 § 1)

[745—]4. **Same—Application to county auditor**—Any resident free-holder of such county may apply for seed and feed or either of them, for himself as follows:—He shall file with the County Auditor on or before the second Monday in March, a written application therefor verified by him showing the following facts:

1. His name, residence and the places where he has resided during the past five (5) years.

2. All lands owned or occupied by him and his interest therein and the encumbrances, if any, thereon.

3. All personal property owned by him and the encumbrances if any, thereon.

4. The number of acres he seeded and harvested last year and the number of bushels of grain threshed by him therefrom.

5. The description of lands he desires to seed, its condition and number of acres plowed and ready for crop.

6. The number of horses and oxen owned by him and the encumbrances if any, thereon.

7. The number of bushels and kind of seed desired and the number of bushels of feed required.

8. That he is poor and unable to procure seed or feed from any other source.

9. That if his application be granted he will not sell or dispose of any part of said seed or feed but will use the whole of the seed in planting the lands specified in his application and the feed for his teams in seeding such lands, and that he will repay the loan from the crop raised from such seed. ('17 c. 21 § 2)

[745—]5. **Same—Procedure of county board—Order—Warrant**—The county auditor shall file and number said applications in the order received by him and call the county board to meet on the second Tuesday in March next following, and said board shall meet and consider said applications separately and in the order of their filing, and may grant such applications in whole or in part as appear to them just and proper. Provided that not more than two hundred (200) bushels of wheat or its equivalent in other seed shall be furnished to any one person.

The county board is hereby granted authority in its discretion to direct the filing by the auditor of the petition provided for in section 1 [745—3] hereof after March 1st, and to receive applications for grain after the second Monday in March and to act upon such petition and application the same as if received prior to the respective dates in said act provided.

The county board shall make an order specifying the names of persons and amounts allowed with the kind and quantities of seed and feed granted, and the county auditor shall issue and deliver to the applicant a warrant showing such allowance. Such warrant shall be for the purchase of such seed and feed and for no other purpose whatever, and shall be paid by the county treasurer only when there is endorsed on the back thereof a receipt signed by the applicant, acknowledging receipt by him from some reputable person, of the seed and feed therein specified. ('17 c. 21 § 3, amended '17 c. 154 § 1)

[745—]6. **Same—Duties of county auditor and county attorney**—The County Auditor and County Attorney are hereby required to attend all meetings of the county board herein provided for and to carefully examine all applications filed under the provisions of this act and shall give the board the benefit of all information they may have relative to the applicants, and shall counsel, advise and assist the county board in the discharge of their duties hereunder. ('17 c. 21 § 4)

[745—]7. **Same—Contract of applicant**—The warrant above provided for shall not be delivered until said applicant shall have signed a contract in duplicate, attested by the county auditor, to the effect that said applicant, for and in consideration of the seed and feed specified, received from said county, promises to pay to said county the amount allowed for the same, on or before the first day of October following, with interest at the rate of six per cent per

annum, that said amount shall be a first lien upon the crop raised from said seed and in addition thereto, shall be taxable against the real property of said applicant for which seed and feed was furnished. Said contract shall also contain a true description of the land upon which the applicant intends to and will sow and plant said seed, in due season next following, and shall specify that his written application shall be a part of this contract. The auditor shall forthwith file one of such duplicate contracts with the register of deeds of his county, for which the applicant shall pay the required filing fee and file the other duplicate in his own office. ('17 c. 21 § 5).

[745—]8. Same—Lien of county—Upon the filing of the contracts provided for in Section 5 [745—7], the county shall acquire a just and valid lien upon the crops of grain raised each year by the person receiving the seed or feed, for the amount owing to the county upon said contract, as against all creditors, purchasers or mortgagees, whether in good faith or otherwise, and the filing of said contract shall be held and considered to be full and sufficient notice to all parties of the existence and extent of said lien, which shall continue in force until the amount covered by said contract is fully paid. ('17 c. 21 § 6)

[745—]9. Same—Indebtedness, when due—Interest—Entry on tax list—The amount of such indebtedness upon such contracts shall become due and payable on the first day of October in the year in which said seed or feed or both is furnished, together with interest on such amount from the date of the warrant or warrants issued therefor, at the rate of six per cent per annum, and if said indebtedness be not paid on or before the first day of November of that year it shall then be the duty of the county auditor of said county to cause the amount of said indebtedness to be entered upon the tax lists of said county, as a tax against the land owned by the applicant for whom said aid was furnished, to be collected as other taxes are collected under the laws of this state. ('17 c. 21 § 7)

[745—]10. Same—Marketing crops—Payment to auditor—Each and every person who has received seed or feed, or both, under the provisions of this act, shall, as soon as his crops for the year wherein payment is to be made are harvested and threshed, market a sufficient amount of grain to pay the amount then due on his contract and pay the same over to the auditor of his county. ('17 c. 21 § 8)

[745—]11. Same—Wrongful disposal of seed, feed or crop—False swearing—Penalty—Title and right of possession of county—Conversion—Any person, or persons, who shall, contrary to the provisions of this act, sell, transfer, take or carry away, or in any manner dispose of the seed or feed, or any part thereof, furnished by the county under this act or shall use or dispose of said seed or feed, or any part thereof, for any other purpose than that of planting or sowing with same as stated in this application and contract, or shall sell, transfer, take or carry away, or in any manner dispose of the crop or any part thereof produced from the sowing or planting of said seed, before the same is paid for, shall be guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than fifty dollars, nor more than one hundred dollars, or may be imprisoned in the county jail for a term of not less than thirty days nor more than ninety days, and shall pay all the costs of prosecution, and whoever under any of the provisions herein shall be found guilty of false swearing shall be deemed to have committed perjury and shall upon conviction suffer the pains and penalties of that crime. Upon the filing of said contract in the office of the register of deeds, and the sowing of the seed obtained therefor, the title and right of possession to the growing crop and to the grain produced from said seed shall be in the county which shall have furnished the seed until the debt incurred for said seed or feed, shall have been paid, and any seizure thereof or interference therewith except by the applicant and those in his employ, for the purpose of harvesting, threshing and marketing the same to pay the debt aforesaid, shall be deemed a conversion thereof and treble damages may be recovered against the person so converting the same by the county furnishing said seed and feed. ('17 c. 21 § 9)

[745—]12. **Same—Duties of town and county officers—Complaint and arrest**—It shall be the duty of the constable and town clerks of the towns and the members of the county board, sheriffs and county attorneys of the counties furnishing seed or feed, having any knowledge of the violation of the provisions of this act, to make complaint thereof to a justice of the peace, and said justice shall thereupon issue a warrant for the arrest of the offender, and proceed to hear and determine the matter, or to bind the offender over to appear before the grand jury, as the case may be. ('17 c. 21 § 10)

[745—]13. **Same—Pro rata distribution**—If more seed grain is applied for than can be supplied by the board, a pro rata distribution shall be made by them among those who shall have been found entitled to the benefits of this act. The board shall have the right to refuse any application which they may deem improper to grant, and they may revise their adjustment of applications at any time before final distribution. ('17 c. 21 § 11)

[748—]1. **Improving navigable lakes, etc., in counties having not less than 150,000 nor more than 220,000 inhabitants**—That whenever there exists in any organized county in the State of Minnesota, now or hereafter having a population of not less than 150,000 inhabitants, nor more than 220,000 inhabitants, a navigable lake or lakes which is, or are, wholly, or as to the greater part thereof, within the limits of said county, the board of county commissioners of said county is hereby authorized and empowered to appropriate not to exceed the sum of ten thousand (\$10,000.00) dollars from the general revenue fund of said county, for public improvements on or about said lake or lakes, or on or about any stream emptying into such lake or lakes, or connecting one of such lakes with another of such lakes, by dredging or opening the channel of navigation in such lakes, by dredging or opening the channel of navigation in such lake or in such stream, or otherwise improving the same.

Provided, that the population of any county shall be determined by the official census next preceding any appropriation made under the provisions of this act. ('17 c. 117 § 1)

749. **Patrolling lakes in counties having not less than 200,000 nor more than 275,000 inhabitants**—The chairman of the board of county commissioners of any county to which this act shall apply, may appoint and employ, during his pleasure, subject to the approval of the county board of such county, not more than two persons to police and patrol the lakes and waters lying or being wholly or partly within said counties. (Amended '17 c. 160 § 1)

[759—]1. **Soldiers rest plot in cemeteries**—The Board of County Commissioners of any county in this state may purchase a plot of ground in any duly organized cemetery, lying in whole or in part in their respective counties, to be designated, set aside and used exclusively as a "Soldiers Rest," and appropriate for the payment thereof not to exceed the sum of one thousand (\$1,000.00) dollars in any one year. Provided, however, that any county in this state now having or which may hereafter have a population of not less than 150,000 inhabitants may appropriate not to exceed the sum of three thousand five hundred (\$3,500.00) dollars in any one year. ('17 c. 60 § 1)

[759—]2. **Same—Use of plots**—Any plot of ground secured as herein provided and designated as a "Soldiers Rest" shall be used exclusively for the interment of deceased, indigent, active or discharged soldiers, sailors and marines of the United States of America, without charge for space therein ('17 c. 60 § 2)

[759—]3. **Same—Penalty for violation**—Any person interring or causing to be interred a body not within the provisions of this act, or making a charge for a burial lot in such "Soldiers Rest," shall be guilty of a misdemeanor. ('17 c. 60 § 3)

[759—]4. **Soldiers and sailors monument in certain counties**—That the county board in any county of this state now or hereafter having taxable property of an assessed valuation of not less than \$300,000,000, and having

therein a city of the first class, may at any time after the taking effect of this act, appropriate and expend from the general revenue fund of said county, a sum not exceeding \$20,000 to defray part of the cost of providing and erecting a suitable public monument in memory of the soldiers and sailors of the nation, upon a location in said county within four hundred feet of the county court house in said county, provided a sum equal to that appropriated and expended by such county shall also be contributed to the cost of furnishing and erecting such monument, by any such city of the first class in said county and by private donations, or by either of the same, to defray the remainder of the cost of furnishing and erecting such monument. ('17 c. 27 § 1)

[763—]1. **Refundment of money paid for clerical assistance**—Wherever any county officer has heretofore paid any amount for clerical assistance in his office, and the county board has heretofore approved such payment by such officer and its repayment to such officer, then such amount may be paid by such county to such officer in the same manner that ordinary claims allowed by county boards are paid. ('15 c. 39 § 1)

773. Section corners—

Monuments placed by a county surveyor pursuant to this section, in the absence of other evidence, show prima facie the section corners and quarter posts of the government survey (124-233, 144+758). Boundaries, 40(2).

TERMS OF CERTAIN COUNTY OFFICERS

809-810. [Superseded.]

See §§ [810—]1 to [810—]3.

[810—]1. **Auditor, treasurer, sheriff, register of deeds, attorney, clerk of district court, court commissioner, coroner, surveyor, superintendent of schools**—In every county in this state there shall be elected at the general election in 1918 a county auditor, county treasurer, sheriff, register of deeds, county attorney, clerk of the district court, court commissioner, coroner, county surveyor and county superintendent of schools. ('15 c. 168 § 1)

Section 4 repeals inconsistent acts, etc.

Cited (133-65, 157+907).

132-426, 157+652.

This section is not violative of Const. art. 11 § 4, and art. 7 § 9 (133-65, 157+907). Counties, 65.

[810—]2. **Same—Terms**—The terms of office of the said county officers shall be four (4) years and until their successors are elected and qualified, and shall begin on the first Monday in January next succeeding said election, and said offices shall be filled by election every four (4) years thereafter. ('15 c. 168 § 2)

Cited (133-65, 157+907).

This section is not violative of Const. art. 11 § 4, and art. 7 § 9 (133-65, 157+907). Counties, 65.

Where the successor is not "elected," the former incumbent, defeated for re-election, holds over (131-401, 155+629). Officers, 54.

The extension of the term to four years by the act of 1915, and providing that the officers named shall hold their offices until their successors are elected and qualified, are not unconstitutional as extending the term of office to a period of more than seven years, in violation of Const. art. 6 § 9, and art. 7 § 9, fixing the commencement of the official year, since an election for a period longer than seven years would be valid to the extent of the constitutional period (131-401, 155+629). Judges, 7, 9.

An opposing candidate, a candidate for re-election to the office of county superintendent of schools, unsuccessfully contested the election of the successful candidate, and surrendered the office to the contestee, who qualified and assumed the duties of the office. On appeal, however, a judgment of ouster was entered against contestee, who resigned, and respondent was appointed to fill the vacancy. Held, that a vacancy existed, which authorized the appointment of respondent, and contestant did not hold over under this section (131-1, 154+442). Schools and School Districts, 48(3).

[810—]3. **Same—Present officers—Vacancies—Appointments**—Any person now holding any one of the said offices, whether by election or appointment, shall continue in such office until the first Monday in January A. D. 1919, and any appointment made to fill a vacancy in any of the said offices

shall be for the balance of such entire term. All appointments under the provisions of this act, shall be made by the county board. ('15 c. 168 § 3)

Cited (133-65, 157+907).

Laws 1915 c. 168, by providing that clerks elected in 1912 shall continue in office until the first Monday in January, 1919, and that their successors shall be elected in November, 1918, thus extending the term of present incumbents, and creating a vacancy to be filled by the governor in January, 1917, is violative of Const. art. 6 § 13, art. 7 § 9, and art. 11 § 4 (132-426, 157+652). Clerks of Courts, ~~§~~ 3, 7.

COUNTY AUDITOR

811. Election—Term—

Cited in dissenting opinion (131-401, 155+629).

812. Bond—

The sureties on the bond of the auditor are not liable for money paid to the auditor under §§ 3153, 6083, and 6090, post, and converted by the auditor, since the money is directed to be paid to the county treasurer, and its receipt by the auditor was outside the scope of his official duties (133-274, 158+394). Counties, ~~§~~ 98(1).

824. Salaries in counties having not less than 220,000 and less than 300,000 inhabitants—Deputies, clerks and assistants—That in all counties in this state that now have or may hereafter have, according to last completed state or national census, a population in each of not less than two-hundred and twenty-thousand (220,000) inhabitants and less than three-hundred thousand (300,000) inhabitants, the salary of the county auditor shall be and is hereby fixed as at the rate of four-thousand five-hundred (\$4,500.00) dollars per annum; and in all such counties the auditor shall appoint and employ one chief deputy who shall be paid at the rate of two-thousand five-hundred (\$2,500.00) dollars per annum; one deputy and commissioners clerk who shall be paid at the rate of one-thousand eight-hundred (1,800.00) dollars per annum; one deputy and book-keeper who shall be paid at the rate of one-thousand eight-hundred (\$1,800.00) dollars per annum; one chief clerk and one draughtsman who shall be paid at the rates of one-thousand three-hundred (\$1,300.00) dollars per annum; one deputy who shall be paid at the rate of one-thousand six-hundred (\$1,600.00) per annum; one settlement clerk and assistant book-keeper who shall be paid at the rate of one-thousand three-hundred (\$1,300.00) dollars per annum; three counter deputies who shall be paid at the rates of one-thousand two-hundred (\$1,200.00) dollars per annum; four general clerks who shall be paid at the rates of one-thousand one-hundred (\$1,100.00) dollars per annum. One stenographer and comptometer operator who shall be paid at the rate of one-thousand (\$1,000.00) dollars per annum; which above named salaries shall be payable out of the county treasury in equal monthly instalments except as hereinafter provided.

Provided, that any such county auditor shall have authority to command and employ, without additional compensation to that of such deputy or other employee's usual compensation and when, and as often and to such extent as said county auditor may deem proper, the services of any deputy or other employee in said county auditor's office for any work of said office, whether or not such work be the usual work of such deputy or other employee, or be partly or wholly the usual or proper function of some other deputy or employee.

And provided, further, that any such county auditor may, during any year, at his discretion and as often and for as long as he sees fit, reduce the number of said four general clerks, and that the salary amounts which may be saved, together with whatever has been saved during such year through necessary vacancies among other deputies, clerks and assistants of said county auditor's office, and to any extent needful in said county auditor's judgment, be used in same year by him in hiring extra clerks at the same rate of pay respectively as each of said general clerks, for any of the regular work of his office when the same is greater or more hurried than is common throughout the year. (Amended '15 c. 133; '17 c. 474 § 1)

826. Additional salaries in certain counties—In all counties of this state having a population of 24,000 or more inhabitants where the salary of the county auditor of such county is by special law fixed at the sum of twelve

hundred dollars (\$1,200) or less, said county auditor shall hereafter receive as salary in addition to said sum provided by said special law the sum of one thousand dollars (\$1,000) annually payable in monthly installments. (Amended '17 c. 82 § 1)

827. Salaries of auditors and treasurers in counties having an area of more than 2,500 square miles and valuation of more than \$20,000,000 and not more than \$30,000,000—In each county of this state, having an area of more than two thousand five hundred square miles, and having or which may hereafter have an assessed valuation of more than twenty million dollars and not more than thirty million dollars, according to the assessment for the last preceding year, the county auditor and county treasurer thereof shall each receive an annual salary of three thousand dollars; and such county auditor and county treasurer shall be allowed for clerk hire as follows: Upon each dollar of such assessed valuation, not exceeding twenty-five million dollars, the county auditor shall be allowed one-fourth of one mill, and the county treasurer one-tenth of one mill; and upon all sums in excess of twenty-five million dollars, the county auditor shall be allowed one-twelfth of one mill, and the county treasurer one-thirtieth of one mill, on each dollar. Such salaries and allowances for clerk hire shall be paid monthly out of the county treasury upon the order of the county auditor. ('11 c. 128, amended '15 c. 338 § 1)

[829—]1. Salaries of auditors and treasurers in counties having not less than 70 and not more than 80 townships and a valuation of not less than \$3,000,000 nor more than \$5,000,000—In each county of this state now or hereafter containing not less than seventy congressional townships and not more than eighty congressional townships and having at any time an assessed valuation of not less than three million dollars and not more than five million dollars, as finally equalized by the state tax commission, the county auditor and county treasurer shall each receive a salary of eighteen hundred dollars a year, payable in equal monthly installments out of the county treasury. ('15 c. 24 § 1)

[829—]2. Same—Allowances for clerk hire—The sum of fifteen hundred dollars per annum shall be allowed the county auditor and the sum of seven hundred and twenty dollars per annum shall be allowed the county treasurer of any such county for clerk hire, in such offices, which clerk hire shall be paid in the same manner as the salaries of other employees of such county. ('15 c. 24 § 2)

[829—]3. Same—Application—This act shall not apply to any county where salaries of such county officials are now fixed by special law. ('15 c. 24 § 3)

[829—]4. Salaries of auditors in counties having not less than 50 nor more than 70 townships and valuation of not more than \$3,000,000—In each county of this state now or hereafter containing not less than fifty congressional townships and not more than seventy congressional townships and having at any time an assessed valuation of not more than three million dollars, as finally equalized by the state tax commission each year, the county auditor shall receive a salary of fifteen hundred (\$1,500.00) dollars a year, payable in equal monthly instalments out of the county treasury. ('15 c. 139 § 1)

[829—]5. Same—Clerk hire for auditor and treasurer—The sum of nine hundred (\$900.00) dollars per annum shall be allowed the county auditor and the sum of four hundred eighty (\$480.00) dollars per annum shall be allowed the county treasurer of any such county for clerk hire, in such offices, which clerk hire, or so much thereof as shall be found necessary, shall be paid in equal monthly installments in the same manner as the salary of other employees of such county to the persons actually rendering the services as such clerks. ('15 c. 139 § 2)

[829—]6. Same—Application—This section shall not apply to any county where the salary or clerk hire of such county officials are now fixed by special law. ('15 c. 139 § 3)

835. Clerk hire in certain counties—In each County of this State containing 75 or more congressional townships of land and having an assessed valuation of more than six million dollars, the County Auditor thereof shall be allowed for clerk hire, for the year 1915, and for each year thereafter, three-fifths of one mill on each dollar of assessed valuation, not exceeding six million dollars; one-fourth of one mill on each dollar on all sums in excess of six million dollars and not exceeding twelve million dollars; and on all sums in excess of twelve million dollars, one-twentieth of one mill on each dollar; to be paid in the manner provided by the laws of this State relating to the payment of clerk hire allowed County Auditors; provided, that in any such County where the public service would appear to demand it, the County Board may grant an additional sum for clerk hire in the office of the County Auditor, when such additional sum has been approved by the Attorney General and the Public Examiner. (Amended '15 c. 91 § 1)

839. Additional clerk hire for auditor and treasurer in certain counties—That in counties having a population of not less than 24,000 and not more than 28,000 inhabitants, according to the last official census, where the salaries of the auditor and treasurer are fixed by special law the auditor and treasurer shall each be allowed for clerk hire, not to exceed the sum of twelve hundred dollars (\$1,200.00) per annum, to be paid monthly out of the county treasury, upon the order of the county auditor, and no allowance for such clerk hire shall be made or received in any case except for services actually rendered. (Amended '17 c. 79 § 1)

COUNTY TREASURER

841. Election—Term—

131-401, 155+629.

843. Failure to qualify—

131-401, 155+629.

847. Funds, where deposited—

Cited (123-59, 142+945).

[853—]1. Charging off certain uncollectible balances in certain counties—In all counties in this state now or hereafter having a population of three hundred thousand (300,000) or over, if the county board determines by resolution that balances due from banks that were county depositaries, and which banks suspended and became defunct prior to 1895, are uncollectible against said banks, their sureties and their stockholders, it may authorize and direct the county auditor and the county treasurer to charge off and cancel all such uncollected and uncollectible balances upon their respective books and records, and to charge such canceled amounts against the state, the county and cities within said county in proportion to the amount each had on deposit in said banks at the time of their suspension. ('15 c. 148 § 1)

[853—]2. Charging off certain uncollectible balances—In all counties in this state now or hereafter having a population of 300,000 or over, if the county board determines by resolution that balances due from banks that were county depositaries, and which banks suspended and became defunct prior to 1898, are uncollectible against said banks, their sureties and their stockholders, it may authorize and direct the county auditor and the county treasurer to charge off and cancel all such uncollected and uncollectible balances upon their respective books and records, and to charge such canceled amounts against the state, the county and cities within said county in proportion to the amount each had on deposit in said banks at the time of their suspension. ('17 c. 101 § 1)

870. To pay and cancel orders—

As to issue of duplicate where order or warrant is lost or destroyed, see §§ [1846—]4 to [1846—]7.

874. Salary of treasurer in counties having 200,000 and not more than 300,000 inhabitants—The county treasurer of each county in this state hav-

ing or which may have hereafter a population of 200,000 inhabitants or over, and not more than 300,000 inhabitants, shall be paid a salary of four thousand and five hundred dollars (\$4,500.00) per annum. (Amended '15 c. 135; '17 c. 472, § 1)

875. Same—Deputies, clerks, etc.—Salaries—The county treasurer of each county shall appoint and employ one chief deputy, who shall be paid the sum of two thousand five hundred dollars (\$2,500.00) per annum; one deputy who shall have charge of the statement department, who shall be paid the sum of twelve hundred dollars (\$1200.00) per annum; one deputy who shall have charge of the settlement and collection registers, who shall be paid the sum of twelve hundred dollars (\$1200.00) per annum; eight clerks who shall be paid the sum of eleven hundred dollars (\$1,100.00) per annum each; one cashier or teller, who shall be paid the sum of two thousand dollars (\$2,000.00) per annum; one deputy who shall have charge of the inheritance and mortgage tax collections, who shall be paid the sum of twelve hundred dollars (\$1200.00) per annum; one accountant or bookkeeper who shall be paid the sum of fifteen hundred dollars (\$1,500.00) per annum.

He may also employ such other additional or extra help as the business of his office may require during each year, providing that no such other person or extra help so employed, shall be paid compensation greater than at the rate of one hundred dollars (\$100.00) per month and that the entire compensation for such extra help shall not exceed four thousand dollars (\$4,000.00) in any one year. Any of said four thousand dollars (\$4,000.00) appropriated for such extra help remaining unexpended in any one year, shall be turned back to the general fund. (Amended '15 c. 135; '17 c. 472 § 1)

879. Additional salary in certain counties—In all counties of this State having a population of 24,000 or more inhabitants where the salary of the county treasurer is by special law fixed at the sum of one thousand dollars (\$1,000) or less, the county treasurer of such county shall hereafter receive as salary in addition to the said sum provided by such special law the sum of twelve hundred dollars (\$1,200) annually, payable in monthly installments. (Amended '17 c. 80 § 1)

880. Clerk hire in counties having area of less than 2,500 square miles and valuation of more than \$14,000,000 and less than \$35,000,000—In each county of this state having an area of less than 2,500 square miles and which now has or may hereafter have an assessed valuation of more than fourteen million dollars (\$14,000,000) and less than thirty-five million dollars (\$35,000,000) according to the assessment of the last preceding year the county treasurer shall be allowed for clerk hire one-twelfth of one mill for each dollar of such assessed valuation. Such allowance for clerk hire shall be paid monthly out of the county treasury upon order of the county auditor. (Amended '17 c. 206 § 1)

[881—]1. Payment of clerk hire in certain counties legalized—All payments heretofore made for clerk hire in the office of the county treasurer in any county then having an assessed valuation of more than fourteen million dollars and less than eighteen million dollars, according to the assessment of the last preceding year, not exceeding, for any one year, one-twelfth of one mill upon each dollar of such assessed valuation, is hereby legalized and made valid. ('17 c. 330 § 1)

[882—]1. Clerk hire in counties having 75 townships and valuation of not less than \$6,000,000 nor more than \$10,000,000—In each county of this state containing seventy-five (75) or more congressional townships of land and having an assessed valuation of not less than six million nor more than ten million dollars, the county treasurer thereof shall be allowed for clerk hire for the year 1915 and each year thereafter, the sum of eight hundred dollars (\$800.00), to be paid in the manner provided by the laws of this state, relating to the payment of clerk hire allowed county treasurers. ('15 c. 9 § 1)

[882—]2. Clerk hire in counties having not less than 55 nor more than 57 townships and valuation of not less than \$5,000,000 nor more than \$10,-

000,000—In each county of this State, containing not less than fifty-five (55) nor more than fifty-seven (57) Congressional townships of land, and having an assessed valuation of not less than five million dollars (\$5,000,000.00) nor more than ten million dollars (\$10,000,000.00) the County Treasurer thereof shall be allowed for clerk hire for the year 1915 and each year thereafter, not less than four hundred eighty dollars (\$480.00) nor more than nine hundred dollars (\$900.00), the amount to be determined by the Board of County Commissioners of said County and to be paid in the manner provided by the laws of this State relating to the payment of clerk hire allowed the County Treasurer. ('15 c. 89 § 1)

REGISTER OF DEEDS

885. Election—Term—

Cited in dissenting opinion (131-401, 155+629).

888. Reception books—

The entries in the reception book and the transcribing of the instrument into the record book together constitute the full record of the deed, and a purchaser is charged with notice of any facts which either book contains with reference to the title of his proposed grantor (135-109, 160+259). Vendor and Purchaser, 6-231(1).

[903—]1. **Transcribing abstracts of title in certain counties**—That in counties having within them no city of the first class, but having abstracts of land title of record in the office of the register of deeds, the county board is hereby authorized and empowered to have such abstract records transcribed, compared with the original records and checked back whenever the immediate necessity for so doing appears to the said board. ('17 c. 97 § 1)

Section 3 repeals inconsistent acts, etc.

[903—]2. **Same—Compensation**—The work provided for in section 1 of this act [903—1] shall be performed by the register of deeds and persons employed by him therefor. The said register of deeds for performing said work shall receive as compensation such sum as may be fixed by the county board of his county not exceeding two cents for each description, transfer or entry so transcribed, compared with the original records and checked back. Provided, however, that the total amount to be paid for performing said work shall not in any county exceed two thousand five hundred dollars (\$2,500.00) within any 20 years, nor shall any county during any period of 20 years pay, nor the register of deeds of said county during such time receive, for such work to exceed the said sum of two thousand five hundred dollars (\$2,500.00). ('17 c. 97 § 2)

907. **Deputies in counties having less than 75,000 inhabitants**—The county board of every county having a population of less than 75,000 inhabitants, may by written order to be filed in the office of the county auditor allow one deputy register of deeds in such county, compensation for his or her services as such deputy, not exceeding \$900.00 per year. (Amended '17 c. 83 § 1)

[907—]1. **Same—Special law**—This act shall not apply to counties wherein the salaries of county officials are fixed by special law. ('17 c. 83 § 2)

919. **Salary in counties having not less than 200,000 and less than 275,000 inhabitants**—The salary of the Register of Deeds of each county of this state having or which may hereafter have a population of not less than 200,000 and less than 275,000 inhabitants, shall be four thousand five hundred (\$4,500) dollars per annum; and during the time the Register of Deeds shall also act as Registrar of Titles he shall receive in addition thereto the sum of five hundred (\$500) dollars per annum. ('11 c. 366 § 1, amended '15 c. 119 § 1)

920. **Same—Deputies and other officers**—Such register of deeds shall appoint and employ one chief deputy who shall be paid a salary of twenty-five hundred dollars per annum, one second deputy who shall be paid a salary of fifteen hundred dollars per annum, one chief comparer who shall be paid a salary of twelve hundred dollars per annum, one assistant comparer who shall be paid a salary of one thousand dollars per annum, one indexer who shall be

paid a salary of one thousand dollars per annum, and one general clerk who shall be paid a salary of one thousand dollars per annum. ('11 c. 366 § 2, amended '17 c. 376 § 1)

[923—]1. **Salary of register in certain counties**—The county board shall, at its January meeting in each year, fix the salary of the register of deeds in each and every county in which there are not less than forty-eight townships, which has an area of not less than one million acres nor more than a million and a half acres, and whose population according to the census then last taken was not less than fifteen thousand nor more than thirty thousand, and whose valuation is not less than ten million dollars nor more than twenty-five million dollars; and said salary, not to exceed two thousand five hundred dollars (\$2,500.00) a year, payable in twelve equal monthly installments, shall be full compensation for the individual work of said register of deeds, as such official. ('17 c. 202 § 1)

By § 4 this act takes effect January 1, 1918.

[923—]2. **Same—Deputies and clerks and salaries**—The register of deeds may appoint such deputies and clerks as he may deem necessary for the work of the office and recommend a salary to be paid them and each of them, but said appointment shall not take effect until it is approved by the county board, nor shall the salary recommended be given until the same is also approved by such county board, and said approval shall be made at the January meeting of the board on [in] each year. If the register of deeds shall not have made his said appointments before the said meeting, the county board shall do so instead of said official. ('17 c. 202 § 2)

[923—]3. **Same—Fees**—All of the fees taken by the register of deeds and all office compensation and emoluments due for any work done, which it is the duty of the register of deeds to do, shall be collected by him and remitted to the county treasurer and by him placed in and charged to the general revenue fund of the county. ('17 c. 202 § 3)

[ABSTRACT CLERKS]

[923—]4. **Abstract clerks in counties having over 200,000 and not over 300,000 inhabitants—Election—Term**—That in all counties in the State of Minnesota, now, or hereafter having a population of over two hundred thousand and not over three hundred thousand population, the abstract clerk to which any such county is entitled by law, shall be elected at the general election for county officers to be held in the year A. D. 1918, and each four years thereafter, and his term of office shall be for four years and until his successor is elected and qualified. ('15 c. 215 § 1)

Section 3 repeals inconsistent acts, etc.

[923—]5. **Same—Present officers**—The term of office of all abstract clerks now in office in any county embraced in section one of this act shall continue until their successors are elected at the general election in the year 1918, and until such successors qualify as provided by law. ('15 c. 215 § 2)

SHERIFF

924. Election—Term—

Cited in dissenting opinion (131-401, 155+629).

927. Powers and duties—

Liability of sheriff for failure to serve notice of expiration of period for redemption from tax sale (see 129-11, 151+407). Sheriffs and Constables, 6-101, 137(1).

934. County jail—

161+210; note under § 9334.

942. **Same—Deputies, etc.—Salaries**—Such sheriff shall appoint and employ the following deputies, assistants and employes: One chief deputy, who shall be paid a salary of two thousand five hundred dollars per annum, one bookkeeper and cashier, who shall be a deputy sheriff, who shall be paid a salary of eighteen hundred dollars per annum; one assistant bookkeeper,

(who shall be a deputy sheriff), who shall be paid a salary of nine hundred dollars per annum; one stenographer, who shall be paid a salary of nine hundred dollars per annum; seven deputy sheriffs, who shall be known as out-side deputies, each of whom shall be required to pay his own traveling expenses within such county; three of said deputies shall be paid each, a salary of one thousand, five hundred dollars per annum; one of said deputies shall be paid a salary of one thousand, three hundred dollars per annum, and it shall be the duty of such deputy in addition to such other deputies, as may be assigned to him, to care for all insane persons in the custody of the sheriff, and to attend upon the sessions of the probate court in and for said county; three of said deputies shall be paid, each, a salary of one thousand, two hundred dollars. ('09 c. 361 § 2, amended '13 c. 203 § 2; '15 c. 137 § 2; '17 c. 510 § 1)

1909 c. 361 § 2, as amended by 1913 c. 203 § 1 (not 2), and by 1915 c. 137 § 1 (not 2). 1917 c. 510, § 1 designates the sections erroneously.

943. Same—Court room deputies, etc.—Salaries—He shall also appoint at least as many additional deputies, to be known as court room deputies, as there may be judges of the district court in and for any such county, whose duties it shall be, in addition to such other duties as may be required of them as such deputies, to attend to the sessions of the said district court, also one additional deputy to be known as a municipal court deputy, whose duty it shall be in addition to such other duties as may be required of him as such deputy, to attend to the sessions of the said municipal court, and also one other deputy, who shall, in addition to such other duties as may be required of him as such deputy, have charge of the juries at criminal trials conducted in said district court, and the salary of each of the aforesaid deputies is hereby fixed at one thousand one hundred dollars per annum. ('09 c. 361 § 3, amended '13 c. 203 § 2; '17 c. 481 § 1)

944. Same—Jailers, etc.—Salaries—In any such county in which any such sheriff may be in charge of a county jail, he shall also appoint a matron thereof, whose salary is hereby fixed at seven hundred and twenty dollars per annum; an assistant matron, whose salary is hereby fixed at six hundred dollars per annum; a chief jailor, whose salary is hereby fixed at one thousand two hundred dollars per annum, and seven assistant jailors, the salary of each of whom is hereby fixed at one thousand dollars per annum, and the said chief jailor and each of his said assistants shall also be deputies. ('09 c. 361 § 4, amended '13 c. 203 § 3; '17 c. 481 § 2)

[945—]1. Counties having 200,000 and not more than 275,000 inhabitants—Automobiles—The board of county commissioners of any county in this state now or hereafter having a population of not less than 200,000 inhabitants and not more than 275,000 inhabitants is hereby authorized and empowered to appropriate and expend a sum not exceeding three hundred (\$300.00) dollars per annum payable in equal monthly installments, for compensating each deputy sheriff in said county for the use of any automobile owned by such deputy and used by him in the performance of his duties; provided, however, that not more than two deputies in any such county shall be so compensated during the same period. ('17 c. 256 § 1)

[945—]2. Same—Resolution of board—If such board shall consider it advisable to take advantage of the provisions of this act, it may adopt a resolution declaring that a deputy sheriff, or deputy sheriffs therein named, are employed by the sheriff of such county in the performance of work in which such deputy sheriffs habitually use automobiles owned by them, and directing that the auditor of such county shall issue his warrant monthly in said sum of twenty-five (\$25.00) dollars to each of said deputies therein named, upon the filing with said auditor of a certificate by the sheriff of said county declaring that said deputies during the month preceding the date of said certificate, were employed by him as deputies and habitually used, in the performance of their duties, automobiles owned by them. ('17 c. 256 § 2)

[945—]3. Same—Warrants—After the adoption of said resolution the county auditor of such county shall issue his warrants in favor of each of the

deputy sheriffs named in such resolution each month in said sum of twenty-five (\$25.00) dollars and said sums shall be paid at the same time and in the same manner as salaries are now paid to such deputy sheriffs. ('17 c. 256 § 3)

[958—]1. **Counties having not less than 80 and valuation of more than \$20,000,000 and less than \$50,000,000—Salary**—In each county in this state, now or hereafter containing not less than eighty congressional townships and now or hereafter having an assessed valuation of more than twenty million dollars and less than fifty million dollars, the sheriff shall receive an annual salary of thirty-six hundred (\$3,600.00) dollars. ('17 c. 156 § 1)

Section 7 repeals 1913 c. 390, and inconsistent acts, etc.

By § 8 the act takes effect May 1, 1917.

[958—]2. **Same—Duties of Sheriff**—The sheriff in any such county shall perform all the duties and services now or which may hereafter be required by law to be performed by him, and in addition shall serve all papers and post all notices named by law to be served or posted in behalf of the state or county for which he is elected, including all papers to be served or notice to be posted by the board of county commissioners, the county auditor, or any other county official. ('17 c. 156 § 2)

[958—]3. **Same—Deputies, bailiffs, etc.—Salaries**—The sheriff in any such county shall appoint and employ a chief deputy who shall be paid an annual salary of sixteen hundred eighty (\$1,680.00) dollars; a second deputy who shall be paid an annual salary of fifteen hundred (\$1,500.00) dollars; and a third deputy who shall be paid an annual salary of thirteen hundred twenty (\$1,320.00) dollars; one jailor who shall be paid six hundred (\$600.00) dollars per annum; one additional deputy during such times as the district court is in session in his county, and such other and additional deputies, bailiffs, or court officers as may from time to time be required, ordered, or authorized by a judge of said district court, or by the county commissioners of said county, each such additional deputy, bailiff, or court officer to receive a salary at the rate of not to exceed one hundred (\$100.00) dollars per month. The salaries of all such deputies, jailers, bailiffs, and court officers shall be paid by the county. ('17 c. 156 § 3)

[958—]4. **Same—Payment of salaries and expenses**—The salaries aforesaid shall be paid monthly in the same manner as other county officials are now paid, and the same shall be in full compensation for all services rendered by said officers except as hereinafter provided; provided that such sheriff shall be allowed the expenses necessarily incurred by him or any of his deputies in the performance of their official duties which shall be allowed and paid, in the same manner as other claims against such counties are paid and allowed, except that expenses incurred by them in performing the services required by them in connection with insane persons and transportation of criminals and other persons to state institutions, and other charges and expenses incidental thereto shall be allowed and paid as by law in such cases provided.

All claims for livery hire shall state the purpose for which such livery was used and have attached thereto a receipt for the amount paid for such livery, signed by the persons to whom paid, and if the sheriff uses his own team or automobile in the necessary performance of the official duties of his office, he shall be allowed for the use thereof such reasonable amount as the use of a team or automobile could be hired for, under the same circumstances, from any person engaged in the livery business in the same locality; not, however, to exceed eight cents per mile for each mile actually traveled, and no charge shall be made, or paid, for time consumed by such sheriff's conveyance in waiting; provided, further, that nothing in this act contained shall be construed to prevent such sheriff from collecting all fees, mileage, and other expenses or charges provided for, or authorized by law and not herein otherwise mentioned, from the state or any department thereof, or any other person or corporation other than his county, and said sheriff shall, on the first Monday of each month, file with the county auditor of his said county, a correct statement of all such fees, mileage, expenses, and other charges received by him and turn all moneys into the county treasurer. ('17 c. 156 § 4)

[958—]5. **Same—Bloodhounds**—The sheriff in any such county, when authorized to do so by the board of county commissioners, may purchase and keep at the expense of the county, a pair of bloodhounds for use in pursuing and apprehending criminals and fugitives. ('17 c. 156 § 5)

[958—]6. **Same—Application of other provisions**—Nothing herein contained shall be construed to repeal, amend, or modify the provisions of chapter 257 of the General Laws of 1907 [9339], with reference to matrons, night watchman, and assistant jailers; nor the provisions of chapter 192, Laws of 1909 [9344], with reference to boarding of prisoners. ('17 c. 156 § 6)

[963—]1. **Certain counties having less than 55,000 inhabitants—Salary**—Counties having less than fifty-five thousand inhabitants according to the then next preceding census, state or federal, shall pay to their sheriffs an annual salary and their expenses for official services rendered by them for their respective counties in lieu of fees as heretofore provided, excepting in counties having an area of more than twenty-five hundred square miles and a population of more than fifteen thousand and less than nineteen thousand. ('17 c. 312 § 1)

[963—]2. **Same—Classification of counties**—Counties having an area of less than twenty-three hundred square miles shall be divided into classes according to their population as follows:

Those having less than ten thousand inhabitants shall constitute class A. Those having ten thousand or more but less than fifteen thousand shall be class B. Those having fifteen thousand or more but less than twenty thousand shall be class C. Those having twenty thousand or more but less than twenty-five thousand shall be class D. Those having twenty-five thousand or more but less than thirty thousand shall be class E. Those having thirty thousand or more but less than thirty-five thousand shall be class F. Counties having an area of more than twenty-three hundred square miles and a population less than forty thousand and those having thirty-five thousand or more but less than forty thousand inhabitants, shall be class G of this classification of counties as to sheriffs. All counties having a population of forty thousand or more but less than forty-five thousand shall be class H. All counties having a population of forty-five thousand or more but less than fifty thousand shall be class I. All counties having a population of fifty thousand or more but less than fifty-five thousand shall be class K of this classification of counties as to sheriff. ('17 c. 312 § 2)

[963—]3. **Same—Salaries fixed—Expenses**—The several sheriffs of all the above classified counties shall receive a yearly salary and their expenses in lieu of fees for all services rendered by them for their respective counties, excepting those required of them by the tax laws of this state and the salary shall be payable in twelve equal installments each on the last secular day of each month out of the county revenue fund on warrants drawn by the county auditor upon the county treasurer and the minimum amount of those salaries shall be graded according to the classes hereinbefore described, to-wit:

The minimum salaries of sheriffs of the counties included in class A shall be one thousand dollars (\$1,000); class B eleven hundred dollars (\$1,100); class C twelve hundred dollars (\$1,200); class D thirteen hundred dollars (\$1,300); class E fourteen hundred dollars (\$1,400); class F fifteen hundred dollars (\$1,500); class G two thousand dollars (\$2,000); class H twenty-two hundred dollars (\$2,200); class I twenty-four hundred dollars (\$2,400); class K twenty-five hundred dollars (\$2,500). In addition to such salary each sheriff shall be reimbursed for all expenses incurred by him in the performance of his official duties for his county and his claim for such expenses shall be prepared, allowed and paid in the same manner as other claims against counties are prepared, allowed and paid, except that the expenses incurred by such sheriffs in the performance of service required of them in connection with insane persons either by a probate court or by law and a per diem for deputies and assistants necessarily required under such performance of such services shall be allowed and paid as provided by the law regulating the apprehension, examination and commitment of insane persons.

All claims for livery hire shall state the purpose for which such livery was used and have attached thereto a receipt for the amount paid for such livery signed by the person of whom it was hired and if the sheriff uses his own team or automobile he shall be allowed therefor the same amount which would be charged reasonably by any other person for the use of such team or automobile under the same circumstances. ('17 c. 312 § 3)

[963—]4. **Same—Increase of salary—Appeal**—If any sheriff desires a higher than minimum salary, he shall make a showing to the county board of his county that such salary is inadequate as compensation for the services likely to be performed by such sheriff during the coming year, at the regular January or July meeting of such county board, the county board may fix the amount of such salary in any just and reasonable sum. Such sum shall remain as the salary of such sheriff throughout his term, unless raised by further order of the board at a subsequent January meeting or on appeal.

Such sheriff or citizens may appeal from the fixing of said salary in the same way in which appeals may be taken from the allowance or disallowance by the county board, of claims presented to it for allowances as against the county. Said appeal may be heard by the district court either in term or during vacation or at chambers upon eight days' notice of such hearing given to the county auditor and the court upon hearing such appeal shall summarily determine the amount of salary to be paid any such sheriff during the remainder of his term of office unless the same be thereafter increased by the county board as hereinbefore provided and the order of the court fixing the salary shall be served by copy upon the county auditor forthwith. ('17 c. 312 § 4)

[963—]5. **Same—Jailers, etc.—Compensation**—The foregoing provisions for the salaries of sheriffs shall not include the salaries or fees of jailers, matrons, deputies whose attendance is required at terms of court, the board of prisoners, nor the payment of any of the expenses hereinafter specifically provided for.

Whenever there is any riot or impending violation of law, and the sheriff shall be of opinion that other than the regular deputies are required, he shall apply to the judge of the district court to determine upon and fix the compensation of such special deputies as the sheriff may name and appoint, and such special deputies so named and appointed and the compensation of whom is fixed by the judge, shall have all the powers assigned to him by said sheriff in such appointment. The appointment by said sheriffs and the fixing of their compensation shall be immediately certified by the sheriff to the clerk of the district court of his county and such certificate filed by such clerk and such special deputies shall be paid in the same manner as deputies in attendance upon terms of court. ('17 c. 312 § 5)

[963—]6. **Same—Compensation for certain services**—For all services rendered by such sheriff or his deputies for which payment is not to be made out of the county revenue fund, he shall be allowed the fees and compensation fixed by law. ('17 c. 312 § 6)

[963—]7. **Same—Deputies—Salaries**—Every sheriff of a county included in the above classified counties shall appoint a sufficient number of persons, as deputy sheriffs in the manner provided by law, he may also appoint a deputy or deputies who shall have a salary, if upon the application to the judge of the district court, such judge deems such appointment necessary.

If he so determines, he shall fix the salary of such deputy or deputies and such salary or salaries shall be payable as are other salaries hereinbefore provided for. ('17 c. 312 § 7)

COUNTY ATTORNEY

964. Term—Bond—

Cited in dissenting opinion (131-401, 155+629).

See (131-401, 155+629), as to right of incumbent of an office to hold over where his successor is not validly elected.

969. Not to receive fees—Prohibitions—

While this section may have no application in determining whether a county attorney is entitled to extra compensation for services rendered to the county in county ditch proceedings, such compensation is not recoverable in absence of a statute allowing it (161+382). District and Prosecuting Attorneys, ¶5(1).

970. Other attorney, when—

This section authorizes the county board to employ an attorney to assist the county attorney in the prosecution of a criminal case, and to pay such attorney out of the funds of the county (133-343, 158+605). District and Prosecuting Attorneys, ¶3(1).

If the county attorney, after informal conference with the board in session, undertakes to employ an attorney to assist him in pursuance of authority supposedly, though irregularly, given, the county board may thereafter by ratification adopt his action and make it binding on the county, and the allowance of the bill for services of the attorney so chosen constitutes ratification (133-343, 158+605). District and Prosecuting Attorneys, ¶3(1).

974. Compensation in certain counties—

A county attorney held not entitled to extra compensation under §§ 5571 and 5614 for services rendered the county in county ditch proceedings, unless his services are required or requested by the county board, or unless the county has a special interest which it is the duty of the county attorney to protect. The question of damages and benefits is not of special interest to the county (161+382). District and Prosecuting Attorneys, ¶5(1).

975. Contingent fund—Expenses—Limit in certain counties—The county board may set apart yearly a sum not exceeding two thousand dollars as a contingent fund for defraying necessary expenses not especially provided for by law, in preparing and trying criminal cases, conducting investigations by the grand jury, and paying the necessary expenses of the county attorney incurred in the business of the county. All disbursements from such fund shall be made upon written request of the county attorney by auditor's warrant, countersigned by a judge of the district court. Any balance remaining at the end of the year shall be transferred to the revenue fund. Provided that in counties now having or that may hereafter have a population of not less than forty-five thousand (45,000) nor more than sixty thousand (60,000) and containing an area not less than thirty-five (35) nor more than fifty-five (55) congressional townships, the maximum limit for the contingent fund of the county attorney, appropriated by the county board, shall not exceed the sum of one thousand dollars (\$1,000.00). (Amended '17 c. 307 § 1)

977. Same—Assistants, etc.—Salaries—Such county attorney shall appoint and employ one assistant known as first assistant county attorney who shall be paid a salary of three thousand dollars per annum. One assistant known as attorney for county commissioners who shall be paid a salary of two thousand dollars per annum, one assistant known as second assistant county attorney who shall be paid a salary of twenty-two hundred dollars per annum, one assistant known as third assistant county attorney who shall be paid a salary of eighteen hundred dollars per annum, and one stenographer who shall be paid a salary of nine hundred dollars per annum. ('11 c. 88 § 2, amended '15 c. 129 § 1)

1915 c. 129 § 2 repeals inconsistent acts, etc.

978. Attorney in certain counties—Additional duties and compensation—In all counties of this state, containing a population of 24,000 inhabitants and over, where the salary of the county attorney is arbitrarily fixed at seven hundred dollars (\$700.00) or less by special law, such county attorneys shall, in addition to the duties now prescribed by law, be required to attend the trial of misdemeanors before justices of the peace of their respective counties, when requested by the justice before whom such action is pending so to do, and furnished with copy of complaint, and shall receive and be paid for his services as such county attorney the sum of seven hundred dollars (\$700.00) per annum in addition to such sum fixed by special law, payable in monthly installments as now provided by law. (Amended '17 c. 81 § 1)

[978—]1. Counties having 80 townships and valuation of more than \$25,000,000 and less than \$50,000,000—Salary—In each county of this state now or hereafter containing not less than eighty congressional townships, and now or hereafter having an assessed valuation of more than twenty-five million dollars, and less than fifty million dollars, the county attorney shall

receive an annual salary of three thousand dollars. Such salary shall be paid in equal monthly installments out of the county treasury upon warrants of the county auditor, in the same manner as other county officers are paid. ('15 c. 56 § 1)

[978—]2. **Same—Stenographic help**—In such counties the county attorney may employ stenographic help, to be paid by the county, not to exceed eight hundred dollars per annum, which shall be paid in monthly installments out of the county treasury, upon warrants of the county auditor in favor of the person entitled thereto, and upon order of the county attorney, accompanied by his certificate that the service has been rendered. No allowance for hire of such stenographic help shall be made or received, in any case, except for services actually rendered. ('15 c. 56 § 2)

[978—]3. **Same—Certain acts not affected**—Nothing herein contained shall be construed to amend, modify, repeal, or in any manner, affect the provisions of Chapter 233 of the General Laws of 1909, being Section 975 of the General Statutes 1913, relating to the county attorney's contingent fund. ('15 c. 56 § 3)

COUNTY SURVEYOR

984. **Lost posts**—

Cited (125-258, 146+1106).

987. **Same—Deputies, etc.—Compensation—Teams or automobiles**—The county surveyor shall appoint and employ two deputies who shall be paid the sum of sixteen hundred dollars (\$1,600) each; also one clerk who shall be paid the sum of one thousand dollars (\$1,000.00) per annum, two rodmen who shall be paid the sum of three dollars (\$3.00) per day for each and every day while actually employed; and two chainmen at the rate of two dollars (\$2.00) per day for each and every day while actually employed. All of said salaries shall be paid on [in] equal monthly installments out of the county treasury upon warrants of the county auditor. The said deputies shall each be required, in addition to the services to be performed for the compensation above provided for, to keep and maintain a team or automobile, and the Board of County Commissioners are hereby authorized to allow not to exceed the sum of four hundred dollars (\$400.00) per annum for each of said deputies for the expense of keeping and maintaining such teams or automobiles. ('13 c. 192 § 2, amended '17 c. 412 § 1)

1917 c. 412 § 2 repeals inconsistent acts, etc.

[988—]1. **Surveyors in counties having area of over 2,500 square miles and valuation of over \$20,000,000 and less than \$50,000,000—Salary**—In each county of this state now or hereafter having an area of more than 2500 square miles, and now or hereafter having an assessed valuation of more than twenty million dollars and less than fifty million dollars, the county surveyor shall receive from such county an annual salary of sixteen hundred dollars, in full payment for all services performed, which shall be paid in equal monthly installments out of the county treasury upon warrants of the county auditor, in the same manner as other county officers are paid, and in addition thereto the county surveyor in such counties shall be allowed and paid from the county treasury the actual expenses necessarily incurred in the performance of his services. ('17 c. 456 § 1)

Section 3 repeals inconsistent acts, etc.

[988—]2. **Same—Deputies, etc.—Compensation**—The county surveyor in any such county may appoint one deputy, who shall receive as compensation for his services the sum of five dollars per day for each day spent by him in the performance of his duties. On application of the county surveyor, the board of county commissioners in such county may designate the number of such other deputies as the board may deem necessary, at the same salary as the first deputy, and the county surveyor shall thereupon appoint such additional deputies in the number so designated, and he may discharge them at pleasure. The county surveyor may also select and appoint as many axmen, chainmen, and rodmen as may be necessary for the proper performance of

the duties of himself and his deputies, who shall receive such compensation as may be determined by the county board. ('17 c. 456 § 2)

CORONER

989. Election—Term—

Cited in dissenting opinion (131-401, 155+629).

993. Sheriff a party—Coroner to act—

Cited (124-162, 144+752, Ann. Cas. 1915B, 377).

[1008—]1. **Counties having 220,000 and not more than 300,000 inhabitants—Coroner to investigate certain deaths**—It shall be the duty of the coroner, in counties having a population of not less than two hundred and twenty thousand (220,000), and not more than three hundred thousand (300,000) inhabitants, to make such investigations as he shall deem necessary and issue his death certificate in all of the following cases and no others: Violent, mysterious and accidental deaths, including suspected homicides, occurring in his county. ('15 c. 272 § 1)

Section 17 repeals inconsistent acts, etc.

[1008—]2. **Same—Interfering with body—Disposition of effects—Powers of coroner in case of crime**—It shall be unlawful for any person, in any such county, in any manner, to remove, interfere with or handle the body or the effects of any deceased person subject to an investigation by the coroner, except upon order of the coroner or his deputy, and the coroner shall receive, take charge of and safely keep the effects found on the body of such deceased persons and make such disposition of the same as the probate court shall direct by written order to said coroner, and if a crime is suspected the coroner shall have the power to prevent any person or persons from coming into or on said premises, or rooms or buildings thereon, and shall have the custody of any objects that he may deem may be of material evidence in the case. ('15 c. 272 § 2)

[1008—]3. **Same—Death certificate**—It shall be unlawful for any person, other than the coroner, to issue a certificate of death in any of the cases set forth in Section 1 [1008—1], and any violation of this section, or Section 2 [1008—2], of this act, shall be a misdemeanor, punishable by fine or imprisonment, or both. ('15 c. 272 § 3)

[1008—]4. **Same—Autopsy—Fees—Duty of chief chemist of state dairy and food department**—The coroner shall order an autopsy when and where he deems proper and physicians called by the coroner to make such autopsies shall receive six dollars (\$6.00) per day and mileage for such services. He may order a chemical analysis or microscopic examination of any portion of a dead body, or matter or other thing material to determine the facts of death. It is hereby made the duty of the chief chemist of the state dairy and food department to make such chemical analysis upon the request of the coroner. ('15 c. 272 § 4)

[1008—]5. **Same—Inquests—Duty of county attorney**—The coroner shall hold inquests only in such cases as he deems there exists probable cause that a crime has been committed. He shall have authority to fix the time and place for holding such inquests. He shall notify the county attorney to appear and conduct the examination of all witnesses at such inquest and in the absence of the county attorney at such proceeding the coroner shall conduct the same. ('15 c. 272 § 5)

[1008—]6. **Same—Summons for jurors**—In every case where he holds an inquest he shall summon as jurors six good and lawful men of said county to appear before him at the time and place specified in the summons, which said summons shall read in substance as follows:

State of Minnesota,

County of

State of Minnesota to, Greeting:

You are hereby commanded to lay aside your business and excuses and appear before me, coroner of said county at (state time and place) and then

and there inquire into the death of and as to how and by what means he or she came to his or her death.

Hereof fail not on penalty that will follow. Given under my hand this day of 19.....

.....
Coroner.

('15 c. 272 § 6)

[1008—]7. **Same—Sheriff or constable to make return**—The sheriff or any constable or any other person whom the coroner shall designate, shall forthwith make return of the summons above mentioned and of his doings thereunder, under his hand, to the coroner. ('15 c. 272 § 7)

[1008—]8. **Same—Service of process**—The coroner, or any person of legal age whom he may designate, shall have the power and authority to serve any and all process or papers issued under the hand of such coroner. ('15 c. 272 § 8)

[1008—]9. **Same—Failure of jurors—Other jurors**—In case any of the jurors so summoned fail to appear, the coroner may require the sheriff or constable, or any person whom he shall appoint, to return other jurors selected in the foregoing manner, until a jury is obtained, and if any person so summoned as a juror fails to appear without reasonable excuse therefor he shall be subject to the same procedure and punishment for non-appearance and contempt as is now provided by law for juries in the district court. ('15 c. 272 § 9)

[1008—]10. **Same—Form of oath to jury**—The following oath shall be administered to the jury by the coroner or any of his deputies: "You do swear that you will diligently inquire and due presentment make on behalf of the State of Minnesota, when, how and by what means the person of did come to his or her death, and return a true inquest thereof, according to your knowledge and such evidence as shall be laid before you so help you God." ('15 c. 272 § 10)

[1008—]11. **Same—Inquisition of jury**—The jury, after hearing the testimony, shall draw up and deliver to the coroner, the inquisition under their hands, in which they shall certify when, how and by what means the deceased came to his or her death, and his, or her, name, if it is known, together with all material circumstances attending his or her death, and if it appears that death was caused by criminal violence or culpable negligence, the jurors shall further state by whom the act was committed, if any, either as principals or accessories, if known, or was in any manner the cause of his or her death, which inquisition shall be in substance as follows:
State of Minnesota,

County of

Inquisition taken at in the county of on the day of 19...., before coroner of said county of upon the body of, by the oath of the jurors whose names are hereunto subscribed, who being sworn to inquire on behalf of the State of Minnesota, when, how and by what means the said came to his, or her, death, upon oath do say (insert here when, how and by what means, persons, weapon or instrument, if any, he or she came to his or her death).

In testimony whereof the said coroner and jurors of this inquisition have hereunto set their hands the day and year aforesaid. ('15 c. 272 § 11)

[1008—]12. **Same—Duty of sheriff**—The coroner shall have the services of the sheriff or such person as the coroner may designate and appoint, who shall attend any and all inquests upon request of such coroner and perform all duties as are necessary and imposed upon sheriffs or their deputies in district court and take the oath as prescribed for officers in charge of petit jurors. ('15 c. 272 § 12)

[1008—]13. **Same—Summoning of witnesses, etc.**—The coroner may issue subpoenas and summon such persons as witnesses as he may deem nec-

essary and proper, returnable forthwith, or at such time and place as he shall direct, to give evidence before any inquest or investigation, and such witnesses shall be allowed and paid one dollar per day, for each day's attendance or any fraction thereof, while actually in attendance on such inquest, or investigation, and mileage to and from the place of attendance at the rate of ten cents per mile, which sum shall be allowed and paid out of the county treasury upon warrant of the county auditor thereof and certificate of the coroner that such services have been rendered, and said witnesses shall be subject to the same procedure and punishment for non-attendance or refusal to testify as is imposed by law upon witnesses in the district court and no person shall be excused from answering any question on the ground that his examination will tend to convict him of the commission of a crime, but his answers shall not be used as evidence against him in any criminal proceeding. ('15 c. 272 § 13)

[1008—]14. **Same—Form of oath to witnesses**—The following oath shall be administered to witnesses: "You do solemnly swear that the evidence you shall give at this inquest, or investigation, concerning the death of shall be the whole truth and nothing but the truth, so help me God." ('15 c. 272 § 14)

[1008—]15. **Same—Death within jurisdiction of another coroner**—If, during any proceeding authorized by this act, the coroner finds that death actually occurred within the jurisdiction of another coroner, he shall discontinue further proceedings and hold the body subject to the order of the coroner in whose jurisdiction the death occurred, and he shall immediately notify the coroner having jurisdiction where death occurred, of the main facts in the case, and it shall be the duty of the coroner so notified to immediately institute such proceedings as the law directs had the case come into his hands originally, and all further proceedings shall be held by the coroner of the county in which death occurred. ('15 c. 272 § 15)

[1008—]16. **Same—Police authority**—Police authority is hereby conferred on the coroner and his deputies. ('15 c. 272 § 16)

SUPERINTENDENT OF SCHOOLS

1009. Election—Term—

Cited in dissenting opinion (131-401, 155+629).

1010. **Salary—Certain counties excepted**—Salaries of county superintendents, except as hereafter provided shall be fixed by the county board, and shall not be less than a sum equal to fifteen dollars (\$15.00) or twelve dollars and fifty cents (\$12.50) as herein provided for each organized public school in the county, to be reckoned pro-rata for the year from the time when a new school, organized in any district, begins. It shall be fixed at not less than fifteen dollars (\$15.00) for each public school in the county, until the salary, reckoned on that basis, reaches one thousand dollars (\$1,000), and in counties where the salary, reckoned at fifteen dollars (\$15.00) per school, shall exceed one thousand dollars (\$1,000) it shall be reckoned on the basis of not less than twelve dollars and fifty cents (\$12.50) for each public school in the county, until the salary reaches two thousand dollars (\$2,000) but in no county shall the salary, reckoned on the basis of twelve dollars and fifty cents (\$12.50) for each school, be less than one thousand dollars (\$1,000). Provided, that when one or more school districts are hereafter discontinued in any county as a result of consolidation, or when school in any school-building is or has been discontinued as a result of consolidation and the children usually attendant thereat are transported to another school in the same or adjoining district by the school authorities, then hereafter the salary of the county superintendent shall be reckoned and an assistant or assistant superintendent, if any, shall be appointed on the basis of the number of schools before such consolidation, or discontinuance, was made. If any county, except as otherwise provided in this Act, the salary of the county super-

intendent may be fixed by the county board at such sum higher than two thousand dollars (\$2,000) as the county board shall determine.

The provisions of this section shall apply to all counties in this state excepting (1) those having a population of one hundred and fifty thousand or more, in which the salary of the county superintendent and the appointment and salary of his assistant shall remain as now fixed by law referring to such counties, and (2) other counties where the salary of county superintendent is now fixed by special law in which last-named counties the salary of the county superintendent shall be fixed by such special law, but all other provisions of this act shall apply to such last-named counties.

The term "school" as used in this act shall be understood to mean a school building in which a public school is held. ('11 c. 216 § 1, amended '15 c. 141 § 1)

OFFICERS IN COUNTIES HAVING 300,000 INHABITANTS

1021, 1022. [Superseded.]

See § 1023.

[1022—]1. **Same—Duties**—The sheriff shall perform all the duties and services now, or which may hereafter be required by law to be performed by him, and in addition shall serve all papers, post all notices named by law to be served or posted in behalf of the state or of the county for which he is elected, including all papers to be served or notices to be posted by the board of county commissioners, the county auditor, or by any other county officer. ('17 c. 109 § 2)

1023. **Sheriff—Salary—Deputies and employés—Salaries, etc.**—The salary of the sheriff of each county of this state, having or which may hereafter have a population of 300,000 inhabitants or over shall be five thousand dollars (\$5,000.00) per annum.

The sheriff shall appoint and employ one chief deputy who shall be paid the sum of two thousand dollars (\$2000.00) per annum; one bookkeeper, who shall be paid fifteen hundred dollars (\$1500.00) per annum; one stenographer, who shall also act as deputy sheriff, and who shall be paid twelve hundred dollars (\$1200.00) per annum; one deputy for tax collections, who shall be paid twelve hundred dollars per annum; two outside deputies who shall each be paid eighteen hundred dollars (\$1800.00) per annum, and each of whom shall pay his own traveling expenses within said county, except conveyance and livery hire, while in the performance of his official duties assigned to him as such; one deputy for the care of the insane, who shall be paid thirteen hundred (\$1300.00) dollars per annum; one outside deputy to attend to the service of criminal and other process, who shall be paid thirteen hundred dollars per annum (\$1300.00); one jailor, who shall be paid twelve hundred dollars per annum; one assistant jailor who shall be paid twelve hundred (\$1200.00) dollars per annum; one matron who shall be paid six hundred (\$600.00) dollars per annum; two night watchman who shall each be paid eleven hundred dollars per annum; one cook who shall be paid eight hundred forty dollars (\$840.00) per annum; two deputies in charge of juries who shall each be paid the sum of twelve hundred (\$1200.00) dollars per annum; six general deputies, who shall each be paid twelve hundred (\$1200.00) dollars per annum; two outside patrol deputies, who shall each be paid twelve hundred dollars (\$1200.00) per annum; and the sheriff shall also appoint and employ as many courtroom deputies as there are district court judges in and for said county who shall attend to the court of said judges and perform such duties pertaining to the sheriff's office as the sheriff may require and the compensation of each of said deputies shall be twelve hundred dollars per annum.

That an expense fund of one thousand (\$1000.00) dollars be set aside out of the first one thousand dollars (\$1000.00) received as fees from and after the passage of this act to be used by the sheriff to meet the current monthly expenses of the office, the money so used to be replaced in said fund at the

end of each month when such expense is allowed. ('13 c. 440 § 3, amended '17 c. 511 § 1)

1917 c. 511 § 1 amends 1913 c. 440 § 3 to read as above set forth. See 1917 c. 109 §§ 1, 3.

[1023—]1. **Unlimited number of deputy sheriffs in case of war**—That in the event of a state of war existing between the government of the United States and any other power, the sheriff of any county of this state now or hereafter having a population of 300,000 or more inhabitants, shall have full power and authority to appoint such a number of deputy sheriffs to be known as special deputy sheriffs as he may deem necessary to properly conserve the peace of his county and protect life and property therein. ('17 c. 405 § 1)

[1023—]2. **Same—No compensation—Qualifications—Powers**—The deputies so appointed shall act without compensation, shall be residents of the county wherein appointed and shall exercise such police powers as are now exercised by sheriffs. ('17 c. 405 § 2)

[1023—]3. **Same—County board may authorize compensation when**—Whenever, however, the sheriff of any such county shall report to the board of county commissioners that it is impossible for him to procure a sufficient number of such deputies to act without compensation, the board may authorize the sheriff to employ such a number of such special deputies as it shall designate and fix the compensation for their services. ('17 c. 405 § 3)

1024. **Auditor—Salary**—That salary of the auditor of each county of this state having or which may hereafter have a population of three hundred thousand inhabitants or over, shall be five thousand dollars (\$5,000.00) per annum. ('13 c. 440 § 4, amended '17 c. 511 § 2)

1025. **Same—Deputies assistants, etc.—Salaries**—The auditor shall appoint and employ one chief deputy who shall be paid the sum of twenty-four hundred dollars per annum; one deputy who shall act as commissioner's clerk, who shall be paid the sum of twenty-two hundred (\$2200.00) dollars per annum; one draftsman, who shall be paid the sum of fifteen hundred (\$1500.00) dollars per annum; one deputy who shall act as bookkeeper, who shall be paid the sum of fifteen hundred (\$1500.00) dollars per annum; one assistant bookkeeper who shall be paid the sum of fourteen hundred (\$1400.00) dollars per annum; one assistant draftsman who shall be paid the sum of thirteen hundred (\$1300.00) dollars per annum; one settlement clerk, who shall be paid the sum of eighteen hundred (\$1800.00) per annum; two assistant settlement clerks, who shall be paid fourteen hundred dollars (\$1400.00) and thirteen hundred (\$1300.00) dollars per annum respectively; one warrant deputy, who shall be paid the sum of fifteen hundred (\$1500.00) dollars per annum; one stenographer, who shall be paid the sum of nine hundred and sixty dollars (\$960.00) per annum; one head counter deputy who shall be paid the sum of sixteen hundred (\$1600.00) dollars per annum; three counter deputies who shall be paid the sum of fifteen hundred dollars (\$1500.00) per annum; and ten general clerks who shall each be paid thirteen hundred (\$1300.00) dollars per annum; and two clerks who shall each be paid twelve hundred dollars (\$1200.00) per annum. ('13 c. 440 § 5, amended '17 c. 511 § 3)

1027. **Same—Assistants, etc.—Salaries**—The county attorney, shall appoint and employ one assistant, known as first assistant county attorney, who shall be paid three thousand five hundred (\$3,500.00) dollars per annum; one assistant, known as second assistant and attorney for county commissioners, who shall receive a salary of twenty-seven hundred (\$2700.00) dollars per annum; one assistant, known as third assistant, who shall receive a salary of one thousand nine hundred (\$1900.00) dollars per annum; one assistant, known as fourth assistant who shall be paid the sum of one thousand six hundred (\$1600.00) dollars per annum; one special assistant who shall receive a salary of three thousand five hundred dollars (\$3,500.00) per annum; one special assistant who shall receive a salary of one thousand eight hundred (\$1800.00) dollars per annum; and one stenographer, who shall be paid one thousand two hundred (\$1200.00) dollars per annum. ('13 c. 440 § 7, amended '17 c. 511 § 4)

1028. Register of deeds—Registrar of titles—Salary—The salary of the register of deeds of each county of this state having, or which may hereafter have a population of 300,000 inhabitants or over, shall be four thousand five hundred (\$4,500.00) dollars per annum; and during the time the register of deeds shall also act as registrar of titles, he shall receive in addition thereto, the sum of five hundred dollars (\$500) per annum. ('13 c. 440 § 8, amended '17 c. 511 § 5)

1029. Same—Deputies, assistants, etc.—Salaries—The register of deeds shall appoint and employ one chief deputy who shall be paid two thousand four hundred (\$2,400.00) dollars per annum; one second deputy who shall be paid sixteen hundred (\$1,600.00) dollars per annum; one indexer who shall be paid twelve hundred dollars (\$1,200.00) per annum; one general clerk who shall be paid twelve hundred dollars (\$1,200.00) per annum; one vault clerk, who shall be paid fourteen hundred dollars (\$1,400) per annum; one assistant vault clerk who shall be paid seven hundred twenty dollars (\$720.00) per annum; one delivery clerk who shall be paid eight hundred forty (\$840.00) dollars per annum; one pager, who shall receive one thousand dollars (\$1,000.00) per annum; one chief comparer who shall be paid fourteen hundred dollars (\$1,400.00) per annum; one assistant comparer who shall be paid eleven hundred dollars (\$1,100.00) per annum; four comparers who shall each be paid nine hundred dollars (\$900.00) per annum; one comparer who shall be paid nine hundred dollars per annum; four typists who shall each be paid one thousand dollars per annum; three typists who shall each be paid one thousand dollars (\$1,000.00) per annum; eight copyists who shall each be paid eight hundred forty dollars (\$840.00) per annum; two copyists who shall each be paid seven hundred and eighty dollars (\$780.00) per annum; one stenographer who shall be paid eight hundred forty dollars per annum; and during the time that the register of deeds performs all of the duties required by law as registrar of titles, he shall appoint and employ one deputy, who shall receive the sum of two thousand dollars (\$2,000.00) per annum; one second deputy who shall be paid fifteen hundred dollars (\$1,500.00) per annum; one chief clerk who shall be paid twelve hundred dollars (\$1,200.00). ('13 c. 440 § 9, amended '17 c. 511 § 6)

1031. Same—Deputies, assistants, etc.—Salaries—The clerk of court shall appoint and employ one chief deputy who shall be paid the sum of two thousand four hundred dollars per annum; one deputy clerk who shall be paid eighteen hundred dollars (\$1,800.00) per annum; one deputy clerk, who shall be paid fifteen hundred dollars (\$1,500.00) per annum; four deputy clerks, who shall each be paid thirteen hundred dollars (\$1,300.00) per annum; one bookkeeper, who shall be paid the sum of twelve hundred dollars (\$1,200.00) per annum and eleven deputy clerks, who shall each be paid the sum of twelve hundred dollars (\$1200.00) per annum. ('13 c. 440 § 11, amended '17 c. 511 § 7)

1032, 1033. [Superseded.]

See §§ [1033—]1 to [1033—]3.

[1033—]1. Surveyor—Salary and expenses—That in every County in this State having, or which may have hereafter, a population of three hundred thousand (300,000) inhabitants or over, the county surveyors shall receive from such county, a salary of thirty-six hundred dollars (\$3,600.00) per annum; for all the services performed by him for the county for which he is elected, which sum shall be paid in equal monthly installments out of the county treasury of such counties upon warrants of the county auditor, and in addition thereto the county surveyor shall be allowed and paid from the county treasury his actual expenses necessarily incurred in the performance of his services. ('15 c. 225 § 1)

Section 4 repeals inconsistent acts, etc.

[1033—]2. Same—Deputies, etc.—Salaries, etc.—The county surveyor shall appoint and employ two deputies who shall each be paid two thousand dollars (\$2,000.00) per annum for all the services performed by each of them for said county; also one chief clerk and draftsman who shall be paid the

sum of eleven hundred dollars (\$1,100) per annum; one assistant engineer and rodman, who shall be paid the sum of ten hundred and eighty dollars (\$1,080.00) per annum; two chainmen who shall each be paid the sum of nine hundred and sixty dollars (\$960.00) per annum. All the above salaries and compensations shall be paid in equal monthly installments out of the county treasury upon warrants of the county auditor and said expenses shall be paid monthly from said treasury in a like manner. ('15 c. 225 § 2, amended '17 c. 411 § 1)

[1033—]3. **Same—Duties**—The county surveyor shall perform all the duties and services now, or which may hereafter be required by law to be performed by him. ('15 c. 225 § 3)

1034. **Treasurer—Salary**—The salary of the county treasurer of each county of this state having or which may hereafter have a population of three hundred thousand inhabitants, or over, shall be the sum of five thousand dollars per annum. ('13 c. 440 § 14, amended '17 c. 511 § 8)

1035. **Same—Deputies, assistants, etc.—Salaries**—The county treasurer shall appoint and employ one chief deputy who shall be paid the sum of twenty-four hundred dollars (\$2400.00) per annum; one mortgage registry and inheritance tax deputy who shall be paid the sum of fifteen hundred dollars (\$1,500.00) per annum; one cashier deputy who shall be paid the sum of eighteen hundred dollars (\$1,800.00) per annum; three cashiers (or tellers) who shall each be paid thirteen hundred dollars (\$1,300.00) per annum; one payment listing clerk who shall be paid the sum of twelve hundred dollars (\$1,200.00) per annum; one chief settlement clerk who shall be paid the sum of fifteen hundred dollars per annum; one assistant settlement clerk who shall be paid the sum of thirteen hundred dollars (\$1,300.00) per annum; two assistant settlement clerks who shall each be paid the sum of twelve hundred dollars (\$1,200.00) per annum; two assistant settlement clerks who shall each be paid one thousand dollars (\$1,000.00) per annum; one chief accounting or payment credit clerk who shall be paid the sum of fifteen hundred dollars (\$1,500.00) per annum; one assistant accountant or payment credit clerk who shall be paid thirteen hundred dollars per annum; two assistant accounting or payment credit clerks who shall each be paid one thousand dollars (\$1,000.00) per annum; one bookkeeper who shall be paid fifteen hundred dollars per annum; one remittance register clerk, who shall be paid one thousand dollars per annum; one chief receipt deputy who shall be paid the sum of twelve hundred dollars per annum; one assistant receipt deputy who shall be paid the sum of one thousand (\$1,000.00) per annum; two assistant receipt clerks who shall each be paid the sum of nine hundred dollars (\$900.00) per annum; one correspondence clerk who shall be paid the sum of one thousand dollars (\$1,000.00) per annum; one chief counter deputy who shall be paid the sum of fifteen hundred dollars (\$1,500.00) per annum; one assistant counter or transfer deputy who shall be paid the sum of thirteen hundred dollars (\$1,300.00) per annum; one assistant counter or transfer deputy who shall be paid the sum of twelve hundred dollars (\$1,200.00) per annum; one assistant counter deputy who shall be paid the sum of twelve hundred dollars (\$1,200.00) per annum; one chief statement deputy who shall be paid the sum of thirteen hundred dollars (\$1,300.00) per annum; three assistant statement clerks who shall each be paid nine hundred dollars per annum (\$900.00); which above named salaries shall be payable out of the county treasury in equal monthly installments except as hereinafter provided.

Provided, that any such auditor or county treasurer shall each have authority to command and employ the deputies or other employes of his office without additional compensation to that of such deputy or other employe's usual compensation, and when as often and to such extent as either said county treasurer or auditor may deem proper, the services of any deputy or other employe in said county treasurer's or auditor's offices, for any work of either of said offices, whether or not such work be the usual work of such deputies or other employes or be partly or wholly the usual or proper function of some other deputy or employe.

And, provided further, that either the county treasurer or auditor may, during the year, at his discretion and as often and for as long as he sees fit, reduce the number of clerks in his office and that the salary amounts which may be saved together with whatever has been saved during such year, through necessary vacancies, among any other deputies, clerks and assistants of either county treasurer's or auditor's office, may to any extent needful in either case, be used in the same year by hiring extra help at not to exceed the same rate, for any of the regular work of his office when the same is greater or more hurried than is common throughout the year.

And, provided further, that no such sums or any part thereof as herein provided, shall at any time be used to increase the salaries of any of the employes provided for in this act. ('13 c. 440 § 15, amended '17 c. 511 § 9)

1036. Judge of probate—Salary—The salary of the judge of probate, of each county of this state having or which may hereafter have a population of three hundred thousand inhabitants or over, shall be fifty-five hundred dollars (\$5,500.00) per annum. ('13 c. 440 § 16, amended '17 c. 511 § 10)

1037. Clerk of probate court—Deputies, etc.—Salaries—The judge of probate shall appoint and employ one clerk of probate court, who shall be paid twenty-five hundred dollars per annum; one deputy clerk who shall be paid eighteen hundred dollars (\$1,800.00) per annum; one assistant deputy clerk who shall be paid eighteen hundred dollars (\$1,800.00) per annum; one register clerk who shall be paid fifteen hundred dollars (\$1,500.00) per annum; one inheritance tax clerk who shall be paid fifteen hundred dollars (\$1,500.00) per annum; three general clerks who shall each be paid twelve hundred dollars (\$1,200.00) per annum; one book machine operator who shall be paid twelve hundred dollars (\$1,200.00) per annum; one competent stenographer, who shall be paid eighteen hundred dollars (\$1,800.00) per annum; the duties of which stenographer shall be to act as secretary to the judge in all matters pertaining to his official duties such secretary shall give bond to the state in the sum of five hundred dollars to be approved by the judge in appointing him, conditioned for the faithful and impartial discharge of his duties as such secretary. ('13 c. 440 § 17, amended '17 c. 511 § 11)

[1037—]1. County superintendent—Assistant—Salaries—The salary of the county superintendent of schools in each county of this state, having or which may hereafter have a population of 300,000 or over, shall be twenty five hundred dollars (\$2,500.00) per annum. The county superintendent of schools in any such county is authorized to appoint an assistant at a salary of eighteen hundred dollars (\$1,800.00) per annum and a clerk at a salary not to exceed one thousand dollars (\$1,000.00) per annum, such salaries to be paid in the same manner as are the salaries of other county officials in said county. ('17 c. 511 § 12)

CERTAIN OFFICERS AND SALARIES IN COUNTIES HAVING OVER 150,000 AND LESS THAN 200,000 INHABITANTS

1044–1046. [Superseded.]

See §§ [1046—]1 to [1046—]3.

[1046—]1. Attorney—Salary—The salary of the county attorney of each county of this state having or which may hereafter have a population of not less than 150,000 inhabitants and less than 200,000 inhabitants, shall be \$4,000 per annum. ('17 c. 357 § 1)

Section 4 repeals inconsistent acts, etc.

[1046—]2. Same—Assistants—Salaries and expenses—Such county attorney shall appoint and employ, with the approval of one or more of the district judges, a first assistant county attorney who shall be paid the sum of \$2,500 per annum; and in a like manner a second assistant who shall be paid the sum of \$2,500 per annum; and in a like manner a third assistant who shall be paid the sum of \$1,800 per annum; all of said assistants shall be attorneys duly admitted to practice law in all the courts of the state of Min-

nesota, and they shall take the official oath of office and execute a bond in all respects the same as the county attorney is by law required to execute, and all said assistants shall be fully authorized and empowered to do and perform, at the direction of the county attorney, any and all duties pertaining to such office of such county attorney; such assistant county attorneys shall also receive actual and necessary traveling expenses incurred in the business of the county. Said traveling expenses shall be allowed and paid by the county upon a verified, itemized bill, in the same manner as other bills against said county. ('17 c. 357 § 2)

[1046—]3. **Same—Stenographic work, etc.**—Said county attorney may also employ help for stenographic and typewriting work, but the aggregate of all salaries and expenses for such stenographic and other work shall not exceed \$1,800 per annum. ('17 c. 357 § 3)

[1050—]1. **Coroner—Salary**—The county coroner of every county of this state now having or which may hereafter have a population of not less than 150,000 inhabitants and not more than 200,000 inhabitants, shall receive a salary of twenty-four hundred dollars (\$2,400.00) a year, payable in equal monthly installments as other county officers are now paid, which salary shall be in full compensation for all services rendered by such coroner. ('15 c. 151 § 1)

[1050—]2. **Same—Clerk—Salary**—The county coroner of any such county shall appoint and employ one clerk who shall be paid an annual salary of not more than seven hundred twenty dollars (\$720.00), which salary shall be paid in equal monthly installments as other employees of said county are paid. ('15 c. 151 § 2)

[1050—]3. **Same—Deputies—Compensation**—The said coroner may also appoint such deputy coroners as in his judgment shall be necessary for carrying on the work of said office, but all such deputy coroners shall be duly licensed physicians under the laws of the state, shall be paid by the county coroner out of the salary received by him as such county coroner for all services performed as such deputy coroners within thirty miles of the county seat of any such county. For all services performed by any such deputy coroners residing more than thirty miles from the county seat of any such county, such deputy coroner shall receive such fees and mileage as are now provided by law for such services. ('15 c. 151 § 3)

[1050—]4. **Same—Traveling expenses**—Such coroner, or any deputy coroner, residing within thirty miles of the county seat, shall be reimbursed for any necessary traveling expenses incurred in the discharge of his duties within any such county on duly itemized and verified bills therefor, filed with, audited and allowed by the county board of any such county as are other claims against such county. ('15 c. 151 § 4)

1053. Judge of probate—Salary—Clerk hire—The salary of the judge of probate of all counties which now have, or which may hereafter have, a population of over one hundred and fifty thousand inhabitants and less than two hundred thousand inhabitants shall be \$3,600 per annum.

In addition to said salary the actual compensation for clerk hire in the office of such judge shall not exceed \$6,500, of which not more than \$2,400 shall be for the salary of the clerk of said court and not more than \$1,500 shall be for the salary of a deputy clerk of said court, and the balance for additional clerical and stenographic hire.

In addition to the above fixed salaries the county board of commissioners shall audit and allow the actual and necessary expenditures incurred by such judge of probate and an attendant clerk in the performance of official duties outside the limits of the county seat. (Amended '15 c. 145 § 1)

ASSESSORS IN COUNTIES HAVING 200,000 AND LESS THAN 275,000 INHABITANTS

1063. Salary—The salary of the county assessor of each county of this state, having, or which may hereafter have a population of not less than two hundred thousand (200,000) inhabitants and less than two hundred seventy-five (275,000) inhabitants, shall be four thousand two hundred and fifty dollars (\$4,250.00) per annum. ('15 c. 144 § 1, amended '17 c. 473 § 1)

1915 c. 144 § 1 amended 1913 c. 224 § 1.

1064. Chief deputy—Salary—Such county assessor shall appoint and employ one chief deputy, who shall be paid a salary of two thousand five hundred dollars (\$2,500.00) per annum. ('15 c. 144 § 2, amended '17 c. 473 § 2)

1915 c. 144 § 2 amended 1913 c. 224 § 2.

MISCELLANEOUS PROVISIONS

1088. Woman deputies—Any woman who is a citizen of this State is eligible to appointment as a deputy of any public official authorized by law to appoint deputies. (Amended '17 c. 56 § 1)

1090. Examination of accounts, etc., of retiring officials—Certificate—

Where the incumbent of an office, a candidate for re-election, contested the election of his successful opponent, and, the latter prevailing on the contest, contestant surrendered the office, but on appeal a judgment of ouster was entered against contestee, and he resigned, and another was appointed to fill the vacancy, there was an actual change in the incumbency of the office, so that contestant did not hold over (131-1, 154+442). Schools and School Districts, ~~§~~48(3).

1094. Action against counties—

Under this section where county commissioners have once deliberately and definitely acted on a claim, they cannot thereafter, at least in the absence of fraud or mistake and notice of hearing, set aside the decision and take some other action thereon (125-527, 147+249). Counties, ~~§~~204(4).

[1095—]1. **Refunding taxes on real estate in certain cases in counties having 300,000 inhabitants**—In any case prior to the date of the passage of this act in which in any county of this state now having a population of 300,000 inhabitants or over, wherein the board of county commissioners of such county have been authorized or empowered to refund, pay or repay to the person or persons entitled thereto, moneys at any time heretofore paid for taxes on real estate in such county, the taxable value of which real estate has been enhanced by the grading and filling of public streets, avenues and alleys at private expense, and the amount of taxes so paid by reason of such enhancement has been ascertained and determined by the board of county commissioners of such county, such person or persons entitled to said refundment, payment or repayment shall be entitled to recover from such county the full amount so ascertained and determined without interest thereon. ('17 c. 418 § 1)

[1095—]2. **Same—Demand for refundment—Duty of county board—Warrants**—The person or persons or their assigns desiring to avail themselves of section 1 (one) of this act shall within six (6) months after the date of the passage and approval hereof demand of the board of county commissioners of such county the amount of such refundment, payment or repayment and interest thereon, and the said board of county commissioners shall within thirty (30) days from date of said demand, direct the proper officers of said county to issue the proper warrant or warrants therefor. Said officer or officers shall immediately draw a warrant or warrants for the full amount of said refundment, payment or repayment and interest thereon, and said warrant or warrants shall be paid by the county treasurer of such county out of moneys in his possession which are not otherwise appropriated by law. ('17 c. 418 § 2)

[1095—]3. **Same—Tax levy**—The county board of tax levy of any county coming within the provisions of this act is hereby authorized and directed,

in event there is not sufficient funds in the hands of the county treasurer of such county to pay in full the demands for refundment, payment or repayment of moneys as provided herein, to levy a tax for and make provision for the payment in full of all such demands. ('17 c. 418 § 3)

CHAPTER 8

TOWNS AND TOWN OFFICERS

POWERS—DUTIES—LIABILITIES

1097. Corporate powers—

The township within which a dissolved village was located is not, in the absence of statute so providing, the legal successor of the village, or the owner of its property and funds (125-280, 146+974). Municipal Corporations, ¶51.

1112. **Permanent fund for cemetery purposes**—That the board of supervisors of any township in the state which has heretofore purchased land for, and which is now used or may be hereafter purchased and used as a cemetery therein, may require and provide that any part or portion of the price paid for lots therein shall constitute a permanent fund which shall be deposited as hereinafter provided and that the interest accruing thereon shall be paid annually to the directors of said cemetery to be by them expended in caring for and beautifying such lot in the proportion which the amount set aside from said lot bears to the total amount in said fund. ('11 c. 224 § 1, amended '17 c. 161 § 1)

1113. **Same—Supervisors to fix price**—That said board of supervisors are hereby given power and authority to fix and determine the amount of such price of each such lot sold that shall be taken, held and deposited for the purpose of caring for and beautifying said lot and cemetery and to direct and require the said directors of said cemetery to expend the interest on the same as herein provided. ('11 c. 224 § 2, amended '17 c. 161 § 2)

1114. **Same—May accept gifts**—That said boards of supervisors and directors and each thereof, are hereby authorized and empowered to receive, accept and deposit as hereinafter provided any donation or gift of money made to such fund so created and to provide and require that the interest therefrom shall be used by the directors in the care and beautifying of such lot or lots in such cemetery, or in the care and beautifying of such cemetery, and may receive and accept gifts and donations for the care and beautifying of any particular lot or lots in such cemetery, and shall use the same and the interest thereon for the purpose specified by the donor. ('11 c. 224 § 3, amended '17 c. 161 § 3)

1115. **Same—Deposit with county treasurer**—The said board of supervisors are hereby authorized and empowered to require the directors of any such cemetery to deposit all such money in the county treasury of the county in which such township is located immediately after the sale and receipt by them of payment for any lot sold in such cemetery, or the receipt of any such gift or donation, and the county treasurer of any such county is hereby authorized, empowered and directed to receive the same and all such and deposit it as hereinafter provided. ('11 c. 224 § 4, amended '17 c. 161 § 4)

1116. **Same—Deposit in bank**—That said funds, and all thereof, as soon as received by such county treasurer shall be deposited in a bank designated as a depository of county funds by the board of auditors of such county. ('11 c. 224 § 5, amended '17 c. 161 § 5)

1117. **Same—Interest**—That for the purpose of such deposit, said fund so created shall be treated as other funds in the county treasury, except as

herein otherwise provided, and shall draw no less a rate of interest than is paid on the funds of said county deposited in said depository, provided, however, that the board of directors of said cemetery association may require all or part of said fund to be deposited on time certificates in said depository in the name of said county treasurer, payable to him or his successors in office, and the said county treasurer shall secure on such time deposit the highest rate of interest which said depository will pay thereon and not less than the current rate paid on time certificates by such depository, and for such principal and interest so deposited on time certificates, such treasurer shall be liable in the same way and manner and to the same extent that he is liable upon his bond for moneys deposited on behalf of the county. ('11 c. 224 § 6, amended '17 c. 161 § 6)

1118. Same—Interest, how used—That said fund shall be deposited in such depository in the name of such county and the bond or security given to said county by such depository shall be taken and held to be as security for such fund but the treasurer of such county shall keep an accurate and separate account thereof and shall draw from such depository annually the interest accruing on such fund and pay the same to the board of directors of said cemetery and said board of directors shall use said interest for the purposes aforesaid and none other. ('11 c. 224 § 7, amended '17 c. 161 § 7)

1120. Same—Disposition of excess—That any excess of interest over the sum necessary for the care and beautifying of said lots or cemetery in any one year shall be by said directors deposited in such treasury to be added to and become a part of the principal sum, and no part of the principal sum shall ever be used. ('11 c. 224 § 9, amended '17 c. 161 § 8)

1121. Same—Investment of fund—Treasurer's report—The board of supervisors by and through the board of directors of said cemetery association, if there shall be a board of directors thereof, and if there shall not be a board of directors thereof, then acting as a board of supervisors, shall invest the said fund so created in the same kind of bonds and securities that the permanent school fund of the State of Minnesota may be invested in and for such purpose and none other. And this law as it shall exist at the time any money is received into this fund shall control the investment thereof and such fund shall be invested only as the law provides at the time of the receipt of the money into said fund and no subsequent amendment or change in this law shall authorize the investment of any fund differently or in any other class of securities save as provided in this law when said money is received into said fund. The board of supervisors and the cemetery directors may require the county treasurer of any such county to withdraw all or any part of such fund from such depository for investment as hereinbefore provided, and if said fund or any part thereof be so invested, the said bonds or other securities shall be and remain with the county treasurer and the bond of the county treasurer shall at all times be security for the proper care thereof and the payment of interest received by him thereon to the directors of said cemetery, and upon payment of any such bonds or other securities the treasurer of such county upon such payment shall deposit the same in the depository in which county funds are deposited, the treasurer of such county shall collect the interest upon the funds so loaned and pay the same to the directors of said cemetery whenever requested so to do and shall annually pay over to the directors of said cemetery all interest on money collected or received by him on funds so deposited or invested as herein provided.

On or before the first day of March of each year the county treasurer shall make a report to the board of supervisors of said township in which he shall set forth a statement of all moneys received by him under the terms of this act during the preceding calendar year, and in which report he shall set forth in detail a statement of the amount of money in the said permanent fund on the first day of said calendar year and the amount of securities in said fund on said first day of said calendar year, the amount of money paid into said fund during said year, the amount of money invested in securities in said year and a statement of the securities held in said fund at the end of said

calendar year and the amount of money in said fund at the end of said calendar year, a statement of the amount of interest collected on said fund and turned over to the directors and a statement of the excess, if any, of the interest over the sum necessary for the care and beautifying of said lots which the directors shall have deposited in such treasury to be added to and made a part of the permanent fund. ('11 c. 224 § 10, amended '17 c. 161 § 9)

[1121—]1. **Dynamite for stump blowing**—Towns are hereby authorized and empowered to furnish residents actually settled upon lands within the town with dynamite for the sole purpose of its use in blowing up stumps in connection with the clearing of land owned by such applicant. ('17 c. 89 § 1)

[1121—]2. **Same—Bonds**—Towns shall have the power to buy and issue their warrants for such dynamite and also to execute their bonds for such purpose, the same as they could execute them for any purpose now specified in the statutes of this state; provided, that no town shall have authority to issue its warrants or bonds for such purpose in a total amount greater than five thousand dollars. ('17 c. 89 § 2)

[1121—]3. **Same—Disposition of dynamite—Application—Mortgage—Tax levy**—The town board shall have the disposition of the dynamite so bought by said town and shall deliver the same to such actual residents and settlers only upon their application for the same showing that they are under urgent necessity for using the same for clearing of lands owned by them in fee, or under contract for the purchase by them of the full title thereto, and said application shall state that the applicant thereby recognizes and agrees to pay for and create a lien on his land for the payment of the value of such dynamite, payable in 5 annual payments, substantially as follows:

APPLICATION FOR DYNAMITE

The undersigned hereby applies to the Town of County, Minnesota, for pounds of dynamite, and to obtain the same represents:

1. That he is the owner of

2. That his title thereto or interest therein is as follows:.....

3. That he will tender an abstract of title showing title in fee or a contract to purchase, in the applicant, together with a mortgage and lien contract upon his land, and give a note for the payment of the sale price of said dynamite ten days before asking for its delivery.

4. That said mortgage shall be in the usual form except that it shall contain an agreement that such mortgage is for the payment of the purchase price of pounds of dynamite from the town of, County, Minnesota, and that the amount secured by this mortgage shall be a first lien upon the land therein described which lien shall be in favor of said town, be further secured by levy of an assessment thereon which assessment shall be treated as a town tax, and said tax shall be levied and collected the same as other town taxes and so treated in all respects. The town board shall receive and endorse their approval upon such application, which application shall be in duplicate and said board shall file one copy of said application with the town clerk and the other with the county auditor, after the said town board shall have endorsed thereon the value of the dynamite delivered to such person and the amount that is to be paid each year thereon as principal and interest, and when such endorsement shall have been made by said town board and shall be filed with the county auditor, he shall levy such sums as are required to pay in five years the value of such dynamite as shall have been so delivered to said applicant, and interest thereon, and shall levy such tax upon said land as is necessary to raise such amount, as shall be necessary to pay said liens for dynamite with interest thereon as hereinbefore provided and the said tax shall be extended and collected as are

other taxes for town expenses which are liens upon the same tract of land, and shall thereafter be treated the same as other town taxes. ('17 c. 89 § 3)

[1121—]4. **Same—Wrongful use of dynamite—Penalty**—Any use of said dynamite for any other purpose than that for which it is applied for shall be a misdemeanor. ('17 c. 89 § 4)

TOWN MEETINGS

1122. **First meeting—Proceedings—**

The Australian ballot system does not apply to a town election, such elections being governed by this section and the following sections (127-33, 148+593). Towns, ~~§~~28.

[1123—]1. **Place for holding annual town meeting or general election**—In any town in this state not owning a town hall and which town does not hold its annual town meeting or general election in a city or village, the town board, upon a petition signed by twenty-five of the legal voters of said town, shall, twenty days before any annual town meeting or general election, designate a suitable place in said town for holding such annual town meeting or general election, which place shall be as near as possible to the geographical center of the town. ('17 c. 342 § 1)

TOWN BOARD

[1146—]1. **Lighting highways—Cost; how paid**—The town board of any town is hereby authorized to light any public highway within its territorial jurisdiction where such lighting is necessary for the safety of travel upon such highway at night. The cost of the installation and maintenance of such lights shall be paid from the town road and bridge fund. ('15 c. 180 § 1)

TOWN TREASURER

1161. **Fees**—Each town treasurer shall be allowed to retain two per cent of all moneys paid into the town treasury for receiving, safely keeping, and paying over the same according to law, provided that his compensation shall in no case exceed forty dollars in towns containing not more than 36 sections of land, and fifty dollars in towns containing more than 36 sections of land, in any one year. None of the provisions of this act shall affect the salary of any town treasurer in any township whose assessed valuation is over one million dollars (\$1,000,000.00). (Amended '17 c. 295 § 1)

1190. **Limit of debts, etc.—**

Cited (133-270, 158+392).

1191. **Separation from village—**

A sale of intoxicating liquor by one licensed by the common council of a village during the period of his license, but after the town in which the village is located has voted "no license," is unlawful, where there has been no statutory separation of the village and the town, and both participate in the election (126-505, 148+99). Intoxicating Liquors, ~~§~~148.

CHAPTER 9

VILLAGES AND CITIES

1202. Villages and boroughs—Until reorganized as provided in section 1203 the several villages and boroughs existing as such at the time of the taking effect of the Revised Laws under special legislative charter or under any general law, shall continue thereunder and in all things continue to be governed by such general or special laws; except that the provisions of the General Statutes 1913 and any acts amendatory thereof or supplemental thereto relating to elections in villages, and of chapter 10 of such General Statutes 1913 and any acts amendatory thereof or supplemental thereto relating to indebtedness of villages, shall apply to and govern all such villages organized under any general law: Provided, that any village or borough of either class, having the requisite population, may reorganize as a city in the mode hereinafter prescribed. (Amended '17 c. 355 § 1)

Laws 1885 c. 145, relating to the incorporation of villages, and providing that all villages theretofore incorporated under the general law should be governed by the provisions thereof, though repealed by § 9446, nevertheless, by force of this section, remains in force as to existing villages, which were not reincorporated as provided by § 1203 (124-107, 144+464). Municipal Corporations, ¶10.

By Sp. Laws 1876 c. 14, the village of Le Roy became a village subject to Laws 1875 c. 139, and therefore comes within Laws 1885 c. 145 § 2 (124-107, 144+464). Municipal Corporations, ¶269(1).

1203. Surrender of charter—Reincorporation—Any village or borough organized under general or special charter may relinquish the same, and thenceforth be governed as herein provided. The council or other governing body may propose such relinquishment by a resolution ordering a special election thereon, or ordering such proposition to be submitted at the annual village election. Notice of such special election, and the conduct thereof, shall be as prescribed by law for other special village or borough elections. If submitted at the annual village election, the notice of such election shall contain a notice of the submission of such proposition. The ballots used shall bear the printed words, "For reincorporation—Yes—No," with a square after each of the last two words, in one of which the voter may insert a cross to express his choice. If a majority of the votes cast upon such proposition be in the affirmative, said governing body shall declare the result by resolution, a certified copy of which shall be filed with the county auditor, and another with the secretary of state. Thereupon the former charter shall cease, and the applicable provisions of this chapter be substituted therefor. But until after the election next ensuing, as herein provided, the officers of such former organization shall continue in the discharge of their official duties, being governed therein, so far as practicable, by this chapter. (Amended '15 c. 17 § 1)

124-107, 144+464.

VILLAGES

1204. What territory may be incorporated—

Estoppel of state to question legality of incorporation (see 130-100, 153+257). Municipal Corporations, ¶18.

G. S. 1894 § 1200, as amended by Laws 1903 c. 208, contemplated and required that the necessary population to authorize incorporation should be composed of actual residents in the territory, those having a fixed abode therein, and to exclude those temporarily sojourning therein, and in determining such population, laborers temporarily employed at lumber camps cannot be included (130-100, 153+257). Municipal Corporations, ¶5.

De facto public corporations, and collateral attack on proceedings for incorporation (see 132-59, 155+1040). Quo Warranto, ¶5.

1221. Including territory not subject to village government—Effect—

Cited (127-452, 149+951).

[1221—]1. **Annexation of territory to certain villages**—Any territory in counties having not less than seventy-six nor more than eighty congressional townships, containing a population of not less than two hundred (200) per-

sons, such territory, not included in any incorporated village having a population, according to the last census of not more than four hundred (400) persons with an area of not to exceed two hundred (200) acres and with an assessed valuation of less than seventy-five thousand dollars (\$75,000), but which said territory proposed to be annexed adjoins any such village now existing under the laws of the State of Minnesota, and no part of which territory proposed to be annexed is more than one and one-half miles from the present limits of the village which it adjoins, may be annexed to such village and become a part thereof, upon petition of a majority of the aggregate number of the legal voters residing within the territory included within the limits of said village and the territory proposed to be annexed. Such petition may be presented to the village council of any such village, and thereupon the council, by ordinance, may so extend the village boundaries so as to include the same, provided, however, that the area of said village, including the territory proposed to be annexed, shall, in no case, exceed four sections of land. No such ordinance, so extending the limits of said village, shall take effect until a certified copy thereof is filed with the secretary of state. ('15 c. 121 § 1)

1226. Extending boundaries—

Cited (127-452, 149+951).

[1226—]1. **Extending boundaries—Curative—**That whenever and in all cases between the first day of January, 1917 and the tenth day of March, 1917, the village council or governing body of any organized village in the State of Minnesota has proceeded to pass an act or adopt a village ordinance pursuant to section 1226 of the General Statutes of Minnesota for the year 1913, or pursuant to the laws of said State, and has enacted, passed or adopted such village ordinance extending the village boundaries of such village so as to include abutting lands and territory within such village, and has thereafter and within the time aforesaid filed a certified copy of such ordinance with the Secretary of State of Minnesota, all such acts, proceedings and ordinances and the annexing of the lands and territory described therein are hereby fully legalized, ratified and confirmed and made valid, notwithstanding any defect or defects in the said acts, proceedings or ordinances. ('17 c. 136 § 1)

1228. Extending boundaries of certain villages—

Cited (127-452, 149+951).

1230. Detachment of territory—

Cited (127-452, 149+951).

1231. Detachment of territory from villages of more than 1280 acres—The owner of any unplatted tract of land containing not less than forty acres occupied and used solely for agricultural purposes, situated within the corporate limits of any village in this state and not within 20 rods of the platted portion of said village, may petition the board of county commissioners of the county in which said tract of land is situated, for an order detaching said tract from said village. Upon the filing of said petition in the office of the county auditor of said county the board of county commissioners thereof shall, at their next meeting thereafter, fix a time and place for the hearing of such petition, which time shall not be less than thirty days thereafter, and shall direct a notice of such hearing to be issued and signed by the county auditor of said county on behalf of such board, which said notice shall state the name of such petitioner, describe the tract of land sought to be detached, and the time and place of such hearing, which said notice said petitioner shall cause to be served upon the president of the village council of such village, or the recorder thereof, at least twenty days before the day of hearing, and by posting three copies of such notice in three of the most public places in said village, or in lieu of such posting said notice shall be published in the official paper of such village for two successive weeks, once in each week, in case there shall be a legal newspaper printed and published in said village. Upon the hearing of said petition at the time and place so fixed, if the board of county commissioners shall find that said land is owned by the petitioner

and is used solely for agricultural purposes and that the same may be so detached from said village without unreasonably affecting the symmetry of the settled portion thereof, and that the same is so conditioned as not properly to be subjected to village government or is not necessary for the reasonable exercise of the police powers or other powers or functions of such village, such board of county commissioners shall make an order detaching such land from said village and thereupon said tract of land shall become detached therefrom, and shall thereafter form a part of the township in which it was originally situated, and shall in all things be subject to the town government of such township, and not in any manner under the jurisdiction of such village, and such order shall be filed in the office of the county auditor of such county and a duplicate thereof shall be filed in the office of the village recorder of such village within five days after the same shall have been made. Provided, that this act shall apply only to villages containing more than twelve hundred and eighty acres of land. (Amended '17 c. 477 § 1)

1233. Detaching unplatted lands from villages—

Cited (127-452, 149+951).

1238. Separate election and assessment district—

A sale of intoxicating liquor by one licensed by the common council of a village during the period of his license, but after the town in which the village is located has voted "no license," is unlawful, where there has been no statutory separation of the village and the town, and both participate in the election (126-505, 148+99). Intoxicating Liquors, ~~§~~148.

Property within a village organized under Laws 1885 c. 145, is not, either before or after its separation from the township, liable to be taxed for the payment of any indebtedness incurred for roads and bridges (125-452, 147+439). Municipal Corporations, ~~§~~36(4).

1240. Apportionment of money and debt—Taxes—

125-452, 147+439; note under § 1238.

1241. Separation from villages of agricultural lands and annexation to towns—

Cited (127-452, 149+951).

[1245—]1. **Annexation from villages to cities of third class for city and school purposes**—Any incorporated village whose territory adjoins the territory of any incorporated city of the third class operating under a home rule charter, whether such village is in the same county as said city or not, may be annexed to said city and become a part thereof for city and school purposes in the manner herein provided for. ('15 c. 32 § 1)

[1245—]2. **Same—Petition for election**—Ten per cent or more of the legal voters of such village, according to the number of votes cast at the last village election, may petition the governing body of such village to call an election for the determination of such proposed annexation, which petition shall be filed with the clerk of said village. ('15 c. 32 § 2)

[1245—]3. **Same—Time and place of election**—Such governing body shall within ten days after the filing of said petition as aforesaid fix a time and place for the holding of an election for the determination of said matter, which time shall not be later than thirty days after the filing of said petition, and which place shall be within the limits of said village. ('15 c. 32 § 3)

[1245—]4. **Same—Notices of election**—It shall be the duty of said village clerk to cause a copy of said petition, with a notice attached thereto stating the time and place for holding said election, to be posted in three public places within such village at least ten days before the date of said election: ('15 c. 32 § 4)

[1245—]5. **Same—Judges—Election; how conducted—Ballots**—Said governing body shall also appoint three residents of said village as judges of election, and said election shall be conducted as far as practicable in accordance with the laws governing village elections. The ballots shall bear the words "For annexation Yes....., No.....," with a space after each of the last two words, in one of which the voter shall make a cross to indicate his choice. Immediately after such election the judges shall canvass the ballots, and forthwith make and file with the village clerk a certificate

that they have canvassed the ballots cast at such election, and the number of votes cast for and against said proposition. ('15 c. 32 § 5)

[1245—]6. **Same—Canvass of returns—Certificate**—Within five days after such election said governing body shall meet and canvass the returns of said election. If the canvass shows that the majority of the votes cast were in the affirmative the village clerk shall make a certificate to that effect and attach the same to the original petition together with a copy of the resolution fixing the time and place of said election and proof of the posting of the notices of election herein provided for and forthwith file the same with the city clerk or city recorder of the city to which the village is to be annexed. ('15 c. 32 § 6)

[1245—]7. **Same—Declaration of annexation—Filing—Annexation when complete**—At any time within twenty days after the filing of said certificate the governing body of said city may by resolution duly passed declare the said village to be annexed to said city and to be a part thereof, a certified copy of which resolution shall be duly filed with the secretary of state and the register of deeds of each county in which said city and village are situated, and thereafter said village shall be annexed to and form part of said city, and all the property and assets belonging to said village shall belong and be delivered to said city, and said city shall assume and be responsible for all the liabilities, obligations and indebtedness of said village. ('15 c. 32 § 7)

[1245—]8. **Same—Ward of city**—After such annexation the said village shall be part of such ward or form such new and separate ward as the said resolution annexing it shall specify. ('15 c. 32 § 8)

[1245—]9. **Same—Annexed village to be governed by what laws**—Such annexed village shall in all respects be governed by the laws governing the city at the time of such annexation, and by all of the laws relating to schools and school districts in said city; and the schools and school property of such annexed village shall be under the control and management of the officers and proper authorities of such city controlling and governing the schools and school property of such city. ('15 c. 32 § 9)

[1245—]10. **Same—Liquor licenses**—No license, however, for the sale of intoxicating liquors in the village so annexed to any such city shall ever be granted unless the question of issuing the same shall be first submitted to the electors residing within the territory of such annexed village, and shall be authorized by a majority vote of the electors voting at such election on such question. Such question shall only be submitted to the voters of such annexed village by the governing body of such city upon a petition therefor signed by at least forty per cent of the legal voters of such annexed village. Any such license granted without complying with the terms of this section shall be void. ('15 c. 32 § 10)

[1245—]11. **Same—Assessment and payment of taxes**—In all cases where the territory so annexed is situate in a county other than the county in which such city is situate, all city taxes and assessments levied by such city upon the property situate in such other county shall be certified to the county auditor of the county in which such territory is situate and the county treasurer of such county shall pay to such city and to the school officers thereof all city taxes and assessments and the proper city officers shall pay all school taxes to the proper school officers of such city authorized to receive the same. ('15 c. 32 § 11)

1246. Elections—Officers—Terms—Vacancies—The village election shall occur annually on the second Tuesday of March, when the resident electors shall choose the following named officers for terms beginning the first Tuesday in April next succeeding, to wit: A treasurer and a village council, composed of a president, a clerk and three trustees all for the term of one year, except as hereinafter provided. Also two constables and if there be no municipal court established in the village, two justices of the peace and if said village is a separate election district an assessor, all for the term of two years. Provided, that at the annual election held in March 1918 the three

trustees shall be elected one for a term of one year, one for a term of two years and one for a term of three years, the term for which each is elected to be designated on the ballot and thereafter one trustee shall be elected annually for the term of three years. All officers chosen, having qualified as such, shall hold until their successors qualify. Vacancies in office may be filled for the remainder of the year by the village council. (Amended '17 c. 402 § 1)

Cited (126-298, 148+276).

[1246—]1. **Election under Australian ballot system**—The village council of any village or the town board of any township in this state may by resolution or ordinance at least thirty days before the date of any election for village or township officers to be held therein, resolve or ordain that all elections of village or township officers in said village or township shall be held and conducted under the so-called "Australian Ballot System," until otherwise determined by ordinance or resolution by said village council or Town board, and after the adoption of such resolution or ordinance all elections of village or township officers in said village or township shall thereafter be held and conducted under said "Australian Ballot System," as provided by law for general elections in this state, as far as practicable. This shall relate to no preliminaries of such elections except the filing of candidates and the preparation of ballots as hereinafter provided. ('15 c. 315 § 1)

[1246—]2. **Same—Affidavit and fees—Duty of recorder—Ballots**—Candidates for such offices shall file an affidavit at least one week before election with the village recorder or the town clerk, as the case may be, paying to such officer a fee of one dollar (\$1.00). Such affidavit shall be substantially as provided by Chapter 2 of the Laws of 1912 [336], relating to non-partisan officers. There shall be no primary election, but the filing of such affidavits shall be a pre-requisite to having the name of the candidate placed on the official ballot for the general village election. The village recorder shall prepare and have printed, at the expense of their respective municipalities, the necessary tally sheets and ballots for such election. The ballots shall be printed on yellow-tinted paper, but without the fac-simile of the signature of the county auditor. The ballots shall contain no party designation of any candidates, and the names of the candidates for each office shall be arranged on the ballot alphabetically, according to the surname of such candidates. The ballots shall be counted, tallied and preserved as in general elections, except that the village recorder or town clerk, as the case may be, shall be the final custodian of such ballots, of his respective municipality. A sample ballot shall be posted at the place of election at least two (2) days before such election by the officer whose duty it is to prepare such ballot. ('15 c. 315 § 2)

[1246—]3. **Same—Registration days, etc.**—The Village council or town board, as the case may be, may also provide in such resolution or ordinance that there be two registration days preceding every such election, one of which shall be three weeks prior to the election day, and the other one week prior thereto. The board of election may act as the registration board, and such board shall be designated in time to so act. ('15 c. 315 § 2½)

[1246—]4. **Same—General election laws**—All of the provisions of laws now in force relating to offenses and penalties in connection with general elections are hereby made applicable to village elections. ('15 c. 315 § 3)

[1246—]5. **Certain village elections legalized**—That any election held since the time of the taking effect of the Revised Laws of 1905 in any village then existing under any general law and not having at the time of holding such election become reorganized or reincorporated under the provisions of the Revised Laws of 1905 or the General Statutes of 1913, at which election the provisions of such Revised Laws or General Statutes were followed, is hereby legalized and declared valid, and of the same validity and effect in all respects as if such village had prior to such election become duly reorganized or reincorporated under the provisions of the Revised Laws of 1905 or

the General Statutes of 1913 or such Statutes as amended by chapter 17 of the laws of 1915 [1203]. ('17 c. 35 § 1)

[1246—]6. **Same—Pending proceedings**—This act shall not apply to or affect any contest, action or appeal now pending in which the validity of any such election is called in question. ('17 c. 35 § 2)

[1246—]7. **Salaries of president and trustees in certain villages**—In all villages of this state, now or hereafter having, according to the then next preceding federal or state census, a population of more than five thousand inhabitants, or having, according to the state records for the then next preceding year, an assessed valuation of more than one million, five hundred thousand dollars, the president and trustees shall receive an annual salary of One Hundred Dollars for their services as such officers. ('15 c. 313 § 1)

[1258—]1. **Moneys in hands of treasurer of village declared illegally incorporated**—The moneys remaining in the hands of the person acting as treasurer of a village, the incorporation of which has heretofore or shall hereafter be declared to be illegal, shall by said person acting as village treasurer, be paid to the treasurer of the township in which the territory attempted to be included in such village is situate and in case such territory is situate in more than one township, then said money shall be paid to the township treasurers of said townships in such proportion as the assessed valuation of the real estate thereof, formerly included in such assumed, but illegal village, bears to the assessed valuation of all the real estate formerly assumed to be included therein. ('15 c. 57 § 1)

1265. **Pleading—Evidence—Judgment—**

In a criminal prosecution for violation of a village ordinance, the complaint is sufficient if it refers to the ordinance by number, chapter, or section, and it is not necessary to introduce the ordinance in evidence (124-498, 145+383, 51 L. R. A. [N. S.] 40, Ann. Cas. 1915B, 812). Criminal Law, ¶304(12); Municipal Corporations, ¶639(2).

1268. **Council—Powers—Ordinances—** * * *

8. **Streets—Sewers—Sidewalks—Public grounds**—To lay out, open, change, widen, extend, or vacate streets, alleys, parks, squares, and other public ways and grounds, and to grade, pave, and repair the same; to establish and maintain drains, canals, and sewers, and to alter, widen, or straighten watercourses; to lay, repair, or otherwise improve, or to discontinue, sidewalks, paths, and cross-walks; to prevent the incumbering of streets or other public ways or grounds with vehicles, railway cars or engines, building material, or other substances; to prevent racing or the immoderate riding or driving of animals or vehicles in the village, or the use of sidewalks for other than pedestrian purposes; to require the owners or occupants of buildings to remove snow, dirt, or rubbish from the sidewalks adjacent thereto; and, in default thereof, to authorize such removal at the owner's expense. But no street or alley shall be vacated except upon petition as in this chapter provided.

To define sprinkling districts and to require owners or occupants of lots or lands abutting on any public street or alley, to pay the proportionate share of the expense of sprinkling with water or oil any such street or alley, and in default of such payment to provide for the assessment of such proportionate share against such lots or lands to be collected as other taxes are collected. (Subd. 8, amended '17 c. 406 § 1)

Explanatory—The act amends subd. 8 by adding thereto the paragraph beginning "To define sprinkling districts," etc.

Subd. 6—126-477, 148+466, 52 L. R. A. [N. S.] 999.

Subd. 7—Fixing fire limits—An ordinance of a city operating under a special charter, fixing fire limits, held valid, and its enforcement could not be restrained (131-424, 155+397). Injunction, ¶85(1).

Subd. 8—Evidence held to support a verdict that a proposed new street over a railroad right of way was a public necessity (124-107, 144+464). Municipal Corporations, ¶321(2).

Liability for injury to children playing in sewer trench in street from caving in of earth (see 135-56, 160+190). Municipal Corporations, ¶784, 819(3).

R. L. 1901 c. 167 cited—This provision is not unconstitutional because it does not give property owners an opportunity to be heard as to the necessity of the proposed improvement (124-471, 145+377). Constitutional Law, ¶289.

Under § 3 of this act it was not improper for a council to postpone the construction of a sidewalk from October until the 1st of May following, such postponement not being an abandonment of the work and it not being necessary to give property owners another opportunity to build the walk themselves (124-471, 145+377). Municipal Corporations, ¶446.

Subd. 12—131-195, 154+964, L. R. A. 1916C, 224 and 124-498, 145+383, 51 L. R. A. [N. S.] 40, Ann. Cas. 1915B, 812; note under § 1269.

Subd. 13—134-355, 159+792.

A sale of intoxicating liquor by one licensed by the common council of a village during the period of his license, but after the town in which the village is located has voted "no license," is unlawful, where there has been no statutory separation of the village and the town, and both participate in the election (126-505, 148+99). Intoxicating Liquors, ¶148.

1269. Licensing amusements, peddlers, etc.—

A license fee of \$25 per day for auctioneers, imposed by the village under this section, held not so large as to go beyond legislative discretion (124-498, 145+383, 51 L. R. A. [N. S.] 40, Ann. Cas. 1915B, 812). Licenses, ¶7(9).

A license fee may be of sufficient amount to include the expense of issuing the license and the cost of the necessary police surveillance connected with the business licensed; and when the license relates to a business which the municipality has power to regulate the fee may be sufficiently large to work a restraint (124-498, 145+383, 51 L. R. A. [N. S.] 40, Ann. Cas. 1915B, 812). Licenses, ¶7(9).

The fact that Laws 1889 c. 122 was repealed in terms before R. L. 1905, did not affect the power of a village to pass a license ordinance, since this section went into effect prior to such repeal (124-498, 145+383, 51 L. R. A. [N. S.] 40, Ann. Cas. 1915B, 812). Statutes, ¶274.

[1269—]1. **Public dance halls, etc.**—That the village council of any village shall have power by ordinance to license and regulate the keeping of public dance halls and the holding of public dances therein, as the same now are or may hereafter be defined by law; provided that such village council may in its discretion permit any lodge or society, not organized or maintained for profit, to conduct public dances without being licensed as herein provided. ('15 c. 190 § 1)

[1269—]2. **Musical entertainments in certain villages**—That the village council of any village of 1,000 or more population in this state is hereby authorized to annually levy a half mill tax against the taxable property in such village for the purpose of providing musical entertainment to the public in public buildings or on public grounds, provided however, that in any such village the total sum that may be levied or expended in any one year, shall not exceed the sum of five hundred (\$500.00) dollars. ('17 c. 273 § 1)

1280. Control of streets—

In the absence of an affirmative showing to the contrary, it must be presumed that an appropriation by the town supervisors of a sum of money from the road fund of the town to aid a village within the town in the construction of a bridge was within the limits of the existing fund (133-270, 158+392). Evidence, ¶83(2).

The authority of the town board to make appropriations from the road fund springs solely from this section, and when made by the board cannot be nullified by the electors at a subsequent town meeting (133-270, 158+392). Bridges, ¶11.

Under this section the town supervisors may appropriate money from the town road fund to aid in the construction of a bridge by a village within the town, without previous authorization of the town electors (133-270, 158+392). Bridges, ¶11.

Where the town supervisors, in pursuance of this section, make an appropriation from the town road fund to aid a village within the town in the construction of a bridge, a person who enters into a contract with the village for the construction of the bridge is not required to determine, as against the electors of the town, whether the place designated for the construction of the bridge is a public highway (133-270, 158+392). Bridges, ¶20(2).

1281. Vacating streets—

A petition signed by a majority of the owners of property abutting on the part of the street to be vacated is sufficient (129-259, 152+412). Municipal Corporations, ¶657(4).

[1281—]1. **Change of name of streets**—The village council of any village in this state, whether organized under a general or special law, may by ordinance or resolution duly enacted, change the name of any street or streets in said village. ('17 c. 415 § 1)

[1282—]1. **Certain street vacations legalized**—That in all cases in which, after the first (1st) day of January, 1914, and prior to the first (1st) day of July, 1914, the village council of any village in this state has taken proceedings to vacate and has voted to vacate any street in such village, such proceedings and the vacation of such street are hereby legalized and made valid and effec-

tual for all purposes; provided, however, that the provisions of this act shall not apply to or affect any action now pending involving the validity of any such street vacation. ('15 c. 158 § 1)

[1282—]2. Certain street vacations legalized—That in all cases in which, prior to the first (1st) day of January, 1915, the village council of any village in this state has taken proceedings to vacate and has voted to vacate any street or alley in such village, such proceedings and the vacation of such street or alley are hereby legalized and made valid and effectual for all purposes; provided, however, that the provisions of this act shall not apply to or affect any action now pending involving the validity of any such street or alley vacation. ('15 c. 248 § 1)

[1283—]1. Certain village ditch proceedings legalized—Where the village council of any village of this state, in pursuance of subdivision 8 of section 1268 of the General Statutes of Minnesota for the year 1913, and section 1283, General Statutes of Minnesota for the year 1913, have established and constructed, or attempted to establish and construct, any ditch or drain, all the proceedings for the establishment and construction of such ditch or drain are hereby legalized and made valid, and any assessments or liens levied or created or attempted to be levied or created against the lands benefited by the construction thereof for the cost of the establishment and construction of the same, are hereby legalized and declared to be valid and of full force and effect and a lien against said lands until paid, and all warrants issued under and pursuant to said subdivision of said section 1268 and said section 1283 or either of them are hereby validated. ('17 c. 414 § 1)

[1283—]2. Same—Pending proceedings—This act shall not apply to or affect any proceeding now pending in court, in which the validity of any such proceeding is called in question. ('17 c. 414 § 2)

1284. Same—Street improvements—The council of any such village may cause any street therein, or any part thereof to be graded, paved, or otherwise improved, or any sidewalk, sewer, or gutter to be built, upon a petition therefor signed by a majority of all owners of real estate bounding both sides, and by the owners of at least one-half of the frontage of the street or part of street to be improved, or may order any sewer to be built on any street or part of a street, or any sidewalk or gutter to be built on one side of a street or part of a street, upon like petition, if signed by the owners of at least one-half the frontage on such side of said street or part thereof to be so improved; and, without any petition, it may order any sidewalk, sewer or gutter previously built to be put in repair, or rebuilt, when necessary, and may also, upon petition, cause any street or part of street to be sprinkled when deemed necessary. The cost of such improvement or sprinkling, or any part thereof not less than half, may be assessed and levied, by resolution of the council, upon the lots or parcels of ground fronting on the street, part of street or side thereof, so improved or sprinkled and most benefited thereby. (Amended '11 c. 324 § 1; '15 c. 153 § 1)

124-471, 145+377.

1286. Mode of assessment—Collection—

124-471, 145+377.

Laws 1901 c. 167 cited—A recital in the minutes of a village council held not sufficient to show that the council did not legally ascertain and determine the benefits to defendant's property (124-471, 145+377). *Municipal Corporations*, §469(4).

[1286—]1. Sprinkling and oiling streets in certain villages—The provisions of Sections 1284, 1285 and 1286, General Statutes 1913, relating to the sprinkling or oiling of streets in villages organized or re-organized under the provisions of Chapter 9 of said General Statutes and the assessment of the cost of such sprinkling and the levy of taxes to pay the whole or a portion of such cost and the payment and collection of such assessments, all as provided for in said sections, shall extend to and be applicable in all villages incorporated under any special law or laws of the state. If the village council of any such village shall cause any street or part of street therein to be sprinkled,

it shall proceed in accordance with the provisions of said sections, anything in the charter of such village, or any special law of the state to the contrary notwithstanding. ('17 c. 48 § 1)

1305. Same—Settlement of affairs—

An improper direction as to disposition of village funds on dissolution cannot be complained of by the township in which the village was located (125-280, 146+974). Municipal Corporations, § 51.

[1305—]1. **Funds of certain dissolved villages, how disposed of—**That whenever any village heretofore existing under the laws of this state shall have been dissolved in the manner provided by Sections 1274 and 1275 Revised Laws of Minnesota for 1905, and the council of any such village shall have wholly failed and neglected to designate the manner in which the money assets of such village remaining after the payment of all the debts of such village, and the settlement with the treasurer and other officers thereof, shall be used or otherwise disposed of, and funds belonging to said village shall remain in the hands of the last treasurer of said village, or to the credit of the treasurer of such village, or to the credit of such village, in the bank where such funds were on deposit at the time of the dissolution of such village, such treasurer or the bank where such funds were on deposit at the time of the dissolution of such village, is hereby authorized and directed to forthwith pay over all of such funds to the county treasurer of the county in which such village was located, and the receipt of such county treasurer shall be full and final receipt and release for such funds. That upon the receipt of any such funds as hereinbefore provided, the county treasurer and county auditor of such county shall credit such funds to such village on the books of their respective offices, and within six months thereafter the county auditor of such county shall draw his warrant in favor of the township in which such village so dissolved was located, for the full amount so received by such county treasurer for the credit of such village, after deducting from the amount so received such overdrafts or other sums as may be due to such county from said village for tax refunds or otherwise, and said county auditor shall forthwith deliver such warrant to the treasurer of such township, who shall credit the proceeds thereof to the general fund of such township. ('17 c. 193 § 1)

R. L. §§ 1274, 1275, above referred to, related to motor vehicles.

[1305—]2. **Same—Pending actions—**This act shall not affect any action now pending involving any such funds as are hereinbefore referred to. ('17 c. 193 § 2)

[1305—]3. **Dissolution of certain villages legalized—**That whenever heretofore the electors of any village governed by the provisions of chapter 9, Revised Laws of Minnesota for 1905, shall, at a special election duly called for that purpose, have by a majority vote of such electors voted to dissolve as provided for in section 742 [1304], Revised Laws of 1905, but the result of such election was not certified to the county auditor and by him to the state auditor and secretary of state, as provided for in said section 742 [1304], then and in such case the county auditor of any county wherein any such village is situate may, on its being satisfactorily made to appear to him that a majority of the votes at any such election so held were in favor of dissolution, so certify to the state auditor and the secretary of state; and upon his so doing, the dissolution of such village as a municipal corporation shall be ratified and validated as of the date when such election was so held. ('17 c. 296 § 1)

[1324—]1. **Sale, lease or abandonment of water and light plant, etc.—Submission to voters, etc.—**Any village, in this state wherein there is constructed and in operation water works and lighting plant, or water works or lighting plant, for supplying water and light, or either of them, for public purposes or for the private use of its inhabitants, or both, owned by any such village, may by resolution or ordinance of its governing body, passed and adopted in the usual manner, sell, lease, or abandon any such plant or any specific part thereof; if a specific part of any such plant is to be sold, leased, or abandoned, such resolution shall state the specific part to be so sold, leased, or abandoned. Before any such resolution or ordinance shall become effective the same shall be submitted to the legal voters of such village at a regular

village election or special election therein and approved by a majority vote of the electors voting thereon at any such election. The ballots at any such election shall be printed and contain in full the resolution to be voted upon and thereon immediately following the resolution there shall be printed in appropriate manner the words "yes" and "no" on separate lines, and every voter desiring to vote in favor of such proposition shall thereupon make his cross (X) mark opposite the word "yes," and every voter desiring to vote against such proposition shall make such mark opposite the word "no." Such election shall be conducted and the votes cast thereat shall be canvassed and the result thereof certified in like manner as in case of an election for village officers. ('15 c. 79 § 1)

[1324—]2. **Same—Duty of officers**—Thereupon if any such proposition shall be declared adopted and carried at any such election, the proper officers of any such village shall forthwith proceed to carry out the same according to such resolution. ('15 c. 79 § 2)

[1326—]1. **Certain proceedings and taxes for water mains legalized**—That whenever and in all cases between the 1st day of July, 1913, and the 1st day of January, 1915, the village council of any village in the State of Minnesota, has proceeded to construct water works and lay water mains in such village for the furnishing of water to the inhabitants thereof, and for the purpose of raising the necessary money to pay for the labor, services and material used, including contract prices for laying such water mains, has issued village orders and had thereby procured money which has actually been used by such village for said purpose, and where such village council has levied or attempted to levy special taxes upon property in front of which any water main has been laid to pay for the cost of such water mains, all steps taken, things done and acts and proceedings had, done and performed by such village council in the construction of such water works and the laying of such water mains, and in the levying of such special taxes upon property in front of which such water mains have been laid to pay for the cost thereof, and all orders issued by such village council for the procuring of money for said purpose are hereby legalized, validated, ratified and confirmed, and all such village orders so issued by such village council are hereby legalized, validated, ratified and confirmed and made the legal, valid and binding obligations of such village. All acts and proceedings done or performed by such village council in the performance of said work of constructing such water works and laying such water mains in such village, including the procurement of the necessary money to pay for such mains and the disbursing of moneys in the payment thereof, and the levying of special taxes upon the property in front of which such water mains have been laid, are hereby legalized, validated, ratified and confirmed. Provided, that the provisions of this Act shall not apply to any action or proceeding now pending in any of the courts of this state. ('15 c. 70 § 1)

[1326—]2. **Sewer and water connections in houses—Toilets—Notice—Cost, how paid—Assessments**—Whenever any village in the State of Minnesota, having power to do so, installs, builds and constructs a municipal sewer and water plant within its corporate limits along any public street or alley, it shall be the duty of every owner or occupant of any abutting property platted into lots and blocks having a dwelling house or business property situate thereon to install a toilet in said dwelling or business property, and make connection thereof with the water and sewer in the street or alley adjacent thereto, within thirty days after written notice is given to such owner or occupant to install such toilet and make such connection by the governing body of such village, and the authority to give such notice may by ordinance of such village be delegated to any elective or appointive officer of such village and when the owner or occupant of any property so notified in writing to install a toilet and make sewer and water connection shall for thirty days after such written notice is given, and proof of the service of such notice shall fail, refuse and neglect to make such connection and install such toilet, such governing body may by resolution direct that a toilet be installed and connection made with sewer and water and that the cost of said installation be paid in the first instance by the village out of the general fund of revenue, and the actual

cost thereof assessed against the said property benefited; after such installation and connection is completed there shall be served a written notice of such assessment and an order directing the owner or his or her representative of such property to pay said assessment and within ten days after the service of said written notice, to the treasurer of such village, and after proof of such notice and order and that assessment has not been paid within said ten days the same shall be certified to the county auditor for collection as other assessments for benefits except that such assessment may be spread over a term of three years if so requested when certified, and shall become a lien upon said property until paid. ('17 c. 203 § 1)

[1326—]3. **Same—Penalty for violation**—Any person who shall in any way interfere with the carrying out of the provisions of this act shall be, when convicted subject to punishment by a fine of not less than twenty-five (\$25.00) dollars nor more than one hundred (\$100) dollars, or to imprisonment in the county jail for not more than three months or by both fine and imprisonment at the discretion of the trial court. ('17 c. 203 § 2)

[1337—]1. **Docks and warehouses in certain villages**—That any village in this state now or hereafter located upon any international navigable body of water is hereby authorized to acquire by purchase or condemnation such land bordering on any international body of navigable water, as the council of such village shall determine to be necessary for the use of said village for a public dock and warehouse, or either of the same; and to construct and maintain on such tract of land a public dock or warehouse or either of the same under such rules and regulations for the use of said dock or warehouse as the village council of said village shall by ordinance provide. ('17 c. 36 § 1)

CITIES

1339. How classified—

Cited (123-48, 142+1042).

This section is not unconstitutional as special legislation (124-126, 144+756). Statutes, ¶82.

1340. State census to govern—

123-48, 142+1042.

This section is constitutional (124-126, 144+756). Statutes, ¶82.

1342. Home rule charters—Patrol limits—

The adoption of a home rule charter by the people of a city is legislation, and the authority it furnishes to city officers is legislative authority (134-296, 159+627). Municipal Corporations, ¶48(2).

1345. Proposed charter, how framed—

128-82, 150+389.

Cited (129-240, 152+408).

Power of city under home rule charter to authorize its city council to punish a witness called before it for contempt (see 131-118, 154+750). Municipal Corporations, ¶60.

1347. Regulation of franchises—

Construction of special charter provision (see 130-71, 153+262, Ann. Cas. 1916B, 286).

1348. Charter—How submitted—Ballots—

Calling of election to submit charter returned by commission may be compelled by mandamus, though there has been an intervening election at which the charter might have been submitted (129-181, 151+970). Mandamus, ¶74(2).

1354. Commission form of city government—

The commission charter of the city of St. Paul is not violative of any of the provisions of this act (128-82, 150+389). Municipal Corporations, ¶48(1).

1358. Same—Recall and removal of officers—Ordinances—

Where an ordinance is repealed in response to a sufficient referendum petition of protest, the council cannot thereafter pass the same ordinance, though it may pass one on the same subject-matter, provided it acts in good faith (133-98, 157+991). Municipal Corporations, ¶108.

The constitutional requirement that a municipal charter shall provide a legislative body for the city is not violated by conferring the power of initiative and referendum upon the electors of the city after establishing such legislative body (134-355, 159+792). Municipal Corporations, ¶108.

Proceedings on petition for referendum to suspend ordinance of city of Duluth, under provisions of charter of that city, considered (see 135-221, 160+682). Municipal Corporations, ¶117.

1359. Same—Application of general election laws—

Failure to vote for the requisite number of commissioners, as required by the Duluth charter, held not to vitiate a ballot to such extent that it cannot be counted in canvassing the votes for mayor (127-411, 149+653). Elections, ¶186(1).

1364. Act regulating cities of first class not applicable unless expressly declared—

It is not contrary to the public policy of the state to give to cities of the first class operating under home rule charters power to prohibit the liquor traffic. The charter of the city of Duluth held to grant such power (134-355, 159+792). Intoxicating Liquors, ¶10(1).

[1373—]1. **Amendments to certain charters legalized—**In any case in any city or village in this state where amendments to the city charter of any city or village operating under home rule charter have been prepared and filed with the chief magistrate or chief executive officer of said city or village by a number of persons, not less than that required by the law purporting to be a board of free holders and to have been appointed and to have acted under Section 36, Article 4 of the Constitution of this state, and the laws of this state enacted thereunder; and said amendments to such home rule charter have been actually submitted to the qualified voters of such city or village at a general or special election held therein; and such amendments to said charter have been ratified and adopted by a vote as required by the constitution and laws of this state at such election; and such amendments to said charter have been actually put in operation in said city or village, and the powers by such amendments conferred, have been exercised by the village or city officers, then such amendments to said charter are hereby legalized and made lawful village or city amendments to said charter, and to have the same force and effect to be of like validity as if each, all and every requirement of law for the appointment and qualification of free holders to prepare and propose the same, the preparation, proposing and filing thereof by said board of free holders, the submission thereof to the voters of said village or city and the ratification and adoption thereof by the voters of said village or city, and the certifying and filing thereof in the office of register of deeds of the county and in the office of the Secretary of State had in all things been fully complied with.

Provided, that if said amendments to said city charter have not been filed in the office of the register of deeds of the county, a copy thereof certified to by the mayor of said village or city shall be filed in said office within sixty days after the passage of this act, and if said amendments to said city charter have not been deposited in the office of the Secretary of State, a copy thereof, certified by the mayor, shall be deposited in said office within sixty days after the passage of this act. ('15 c. 297 § 1)

[1373—]2. **Same—Acts of officers legalized—**All acts of officers of said village or city under such amendments shall have the same force and validity as if said amendments to said charter had originally been fully valid and legal and filed as required by the law in the office of the register of deeds and Secretary of State. ('15 c. 297 § 2)

PROVISIONS RELATING TO ALL CITIES

1376. Same—Cities may own and operate or lease—Submission to voters—Reservations in grant—Ordinance authorizing lease—Petition for submission—Regulations and rates—Bonds—Purchase and condemnation—Valuation—Rental—

129-383, 152+777, Ann. Cas. 1916E, 845.

The legislature intends to give municipalities, owning and managing public utilities, the same freedom of action as if owned by private corporations or persons (124-73, 144+453). Municipal Corporations, ¶205.

Contract with a telephone company, whether considered as a franchise or a contract under this act, held invalid, where entered into without advertisement for proposals as required by city charter (122-34, 141+833). Municipal Corporations, ¶236.

Under its charter the city of Virginia has power to issue and negotiate bonds to obtain

funds with which to pay for a water and light plant (123-48, 142+1042). Municipal Corporations, §911.

The terms of purchase may be fixed by agreement without resorting to the method of ascertaining value prescribed in the chapter relative to eminent domain (123-48, 142+1042). Electricity, §1½; Waters and Water Courses, §183(3).

The election for the purchase of such plants and for issuance of bonds therefor was valid; the notice and the publication of resolution being sufficient (123-48, 142+1042). Municipal Corporations, §919.

1383. Certain acts relative to purchase of electric light and water plant legalized—

123-48, 142+1042.

PROVISIONS RELATING TO CERTAIN CITIES

1416. Special assessments in installments for paving in cities having 20,000 inhabitants or less—

134-204, 158+977; note under § 2108, post.

1418. Same—Duty of clerk—How collected—

134-204, 158+977; note under § 2108, post.

Cited (124-300, 145+21).

1427. Same—Taxes, how levied, etc.—When said plan is adopted, as hereinbefore set forth, and said association is formed and incorporated, the proper officers of said association shall certify annually to the proper authorities, who have charge of the levying of taxes in said city and in the county in which said city is located, the amount which it will be necessary to raise by taxation in order to carry out the plans so adopted, as hereinbefore set forth, for the coming year, and it shall be the duty of the said authorities so having charge of the levying of taxes to include in the tax levy for the ensuing year, a tax in addition to all other taxes, sufficient to produce said sum so certified.

Provided, however, that in cities of the first class which are not operating under a home rule charter, said tax shall in no event exceed two tenths of a mill upon all taxable property of said city, and in all other cities to which this law is applicable, said tax shall in no event exceed one tenth of a mill upon all taxable property of said city; and the said tax shall be collected as other taxes are collected in said city and when so collected shall be paid over to the treasurer of said association to be held and disbursed in accordance with the provisions of said plan so to be adopted. ('09 c. 343 § 6, amended '17 c. 300 § 1)

[1430—]1. Musical entertainments in cities of third and fourth classes—

That the governing body of any city of the third or fourth class in this state, is hereby authorized to annually levy not to exceed a half mill tax against the taxable property in such city for the purpose of providing musical entertainments to the public in public buildings or upon public grounds; provided, however, that in any such city the total sum that may be levied or expended in any year shall not exceed the sum of two thousand (\$2,000.00) dollars. ('15 c. 316 § 1, amended '17 c. 426 § 1)

[1430—]2. Appropriation of money or issue of bonds for bridges in cities on interstate or international waters—That any city having a population of not more than 20,000 and situate on interstate or international waters be and the same hereby is authorized and empowered to appropriate money, or to issue bonds to secure money for the construction, maintenance and repair of bridges extending over or partly over such waters into another state or country, or for making reimbursement for all expenditures heretofore or hereafter made or incurred in the construction, repair or maintenance of such bridges as hereinafter specified. ('17 c. 15 § 1)

[1430—]3. Same—Appropriation, from what fund—Tax levy—The governing body of such city may appropriate not to exceed \$15,000 from the general fund, or any other fund available for bridge purposes, or partly from one fund and partly from the other, whenever authorized so to do by the electors of such city in the manner hereinafter set forth, and may levy against the taxable property of such city a tax in an amount sufficient to meet such appropriation, and may authorize the making of temporary loans in anticipation of the collection of such levy. ('17 c. 15 § 2)

[1430—]4. **Same—Bonds—Interest and amount, etc.**—In lieu of such appropriation the said governing body may issue bonds, with interest coupons attached, in any sum not exceeding fifteen thousand dollars (\$15,000), which bonds shall be in sums of not less than one hundred dollars each, and shall bear interest at a rate not exceeding six per cent, per annum, payable annually, and the principal of such bonds shall be payable at such times, not exceeding thirty years from the date thereof, as said governing body may direct. Such bonds and the interest coupons attached thereto, shall be signed by the mayor or chief executive officer of such city, countersigned by the city clerk or city recorder, and no bonds shall be negotiated, sold or disposed of by such city at less than par value, and accrued interest. ('17 c. 15 § 3)

[1430—]5. **Same—Reimbursement of private parties**—Whenever any such bridge has been constructed or improved, and paid for with money furnished by private persons, it shall be lawful for the governing body of such city to use in part the money so raised by tax levy or bond issue to reimburse the persons making such payment. ('17 c. 15 § 4)

[1430—]6. **Same—Submission to voters—Form of ballot—Tax levy, etc.**—Before any expenditures or levies shall be made or any such bonds shall be issued, the governing body of such city shall by resolution determine the amount proposed to be expended or levied, or, if a bond issue be desired, the number and amount of such bonds, the rate of interest which such bonds shall bear, and the time or times when the principal thereof shall become payable, which resolution, together with a notice that the question of issuing such bonds or making such appropriation, as the case may be, will be submitted to the legal voters of such city for their approval or rejection, at a general or special election to be held upon a day in said notice named, shall be published once in the regular issue of two of the newspapers published in the English language in said city, at least ten days prior to the time of holding such election. If such question is submitted at a special election, the governing body of such city shall give thirty days notice thereof previous to the day fixed for such election, which notice shall specify the object for which such election is ordered.

The ballot to be used at such election shall be in substantially the following form: if the proposition submitted be that of bond issuance the form shall be:

"Shall the bonds of the city of be issued in the aggregate amount of, bearing interest at the rate of per cent per annum, the proceeds thereof to be used for the purpose of constructing, maintaining or repairing the bridge over, commonly known as the bridge, or for reimbursing such citizens of such city as may have advanced money for such construction, maintenance or repair, to mature as set forth in the resolution therefor now on file in the office of the city clerk:

Yes: { }
No: { },"

If the proposition submitted be that of appropriation, the form shall be:

"Shall the city council (or other governing body) of the city of be given authority to appropriate from the funds of said city an amount not to exceed dollars for the purpose of constructing, maintaining or repairing a bridge over the, commonly known as the bridge, or for reimbursing such citizens of said city as have advanced money for such construction, maintenance or repair:

Yes: { }
No: { },"

If a majority of the votes cast upon such question shall be in favor of issuing such bonds or authorizing such appropriation, then the city council, or other governing body, shall be authorized to issue such bonds or to ap-

propriate such money from the proper funds of the city in such amount as may be so determined.

For the purpose of paying the principal and interest of such bonds when issued, said city council or other governing body is hereby authorized and it is hereby made its duty, on or before the first day of September next after the date of such bonds, and each and every year thereafter, on or before the first day of September, until payment of such bonds, both principal and interest, is fully provided for, to levy and in due form of law, certify to the county auditor a tax upon the taxable property of said city equal to the amount of interest and principal maturing next after such levy, and, in the event the governing body of such city decide to make direct appropriation without the issuance of bonds, to levy against the taxable property of said city an amount sufficient to meet the appropriation so to be made, and said governing body may, if necessary, issue the warrant of said city to anticipate such appropriation, payable when the same shall have been levied and collected, provided the electors of said city have voted to authorize such appropriation. ('17 c. 15 § 5)

PROVISIONS RELATING TO CITIES OF FIRST CLASS

1432. Elevator operators—License—Penalties—

A boy of 18, injured by an elevator which he was operating in the absence of his instructor, held not employed in violation of this section, though he was not licensed and had been employed for two weeks prior to the accident (133-109, 157+995). Master and Servant, §361, 386, 405(2).

1437. [Superseded.]

See § [1437—]1.

[1437—]1. **Salaries of aldermen in cities not under home rule charters—**That in cities now or hereafter having a population of over fifty thousand inhabitants and not governed under a charter adopted under and pursuant to section 36, article 4 of the state constitution, the salary of each alderman shall be eighteen hundred dollars per annum, payable pro rata monthly out of the city treasury. ('17 c. 460 § 1)

[1456—]1. **Police pension fund in cities under home rule charters—**In every city in this state now having or hereafter having a population of over 50,000 inhabitants and having a home rule charter, there may be created a police pension fund, which shall be managed, controlled and distributed in accordance with the provisions of this act. ('15 c. 68 § 1)

[1456—]2. **Same—Incorporation of police department as relief association—Service, disability or dependency pensions—**That every paid municipal police department now existing or which may hereafter be organized, is hereby authorized to become incorporated pursuant to the laws of this state, or adopt a constitution and by-laws as a relief association, to provide for and permit and allow such police relief association so incorporated or so organized, or any police pension relief association now in existence and incorporated according to law, to pay out of, and from any funds it may have received from any source, a service, disability, or dependency pension in such amounts and in such manner as its articles of incorporation or the constitution and by-laws shall designate, not exceeding, however, the following sum per month to each of its pensioned members who shall have reached the age of 50 years or more, and shall have served twenty years or more in such department, or their widows and children under sixteen years of age, viz:

A sum equal to one-half of the monthly compensation allowed such member as salary at the date of his retirement, when such member shall have arrived at the age of fifty (50) years or more, and shall have served as a member of such paid municipal police department for a period of twenty (20) years or more in the police department of such city in which such relief association shall be so organized, or is so in existence, or who has been disabled physically or mentally because of any injury received or suffered while in the performance of his duties as such member, so as to render necessary his retirement from active police service. Provided, however, that if any mem-

ber retires under the provisions of the act before he has served one year in the grade in which he is serving when he retires, he shall receive the same compensation as though he had retired in the next lower grade. Provided, further, that no retired member shall receive more than seventy-five (75) dollars per month. Said pension may be paid to any widow or child under sixteen years of age of any such pensioned and retired member of the police department or to any widow or child under sixteen years of age of any member who dies while in the service of the police department of any such city, and such widow or child shall receive the sums hereinafter provided:

Twenty-five (25) dollars per month to such widow and six (6) dollars per month to each of such children under sixteen years of age; provided, however, that in the event that any such widow remarries, she shall receive no further benefits under this law; provided, further, that any retired member of such police department or his family receiving benefits under any of the police pension laws of this state at the time of the passage of this act shall not be entitled to receive any increased benefits after the passage of this act; provided, further, that said fund shall not be used for any other purpose than for the payment of service, disability or dependency pensions as herein provided. ('15 c. 68 § 2)

[1456—]3. **Same—Conditions of pension**—The pension authorized by this act shall not be paid to any person while drawing salary in any amount from such city as an employee in said police department; and no member shall be entitled to said pension after he removes his residence from the United States, or who shall have been convicted of a felony or misdemeanor for which he shall have been adjudged to be imprisoned, or who is an habitual drunkard; and any person receiving the pension herein mentioned shall not receive or be entitled to receive any other or further pension or relief from said association. ('15 c. 68 § 3)

[1456—]4. **Same—Garnishment, assignment, etc.**—No pension allowed or to be allowed by said Pension Board under this act, shall be subject to judgment, garnishments, or executions or other legal process, and no person entitled to such pension shall have any right to assign the same, nor shall said association have the authority to recognize any attempted assignment or pay over any sum whatever which has been assigned or attempted to be assigned. ('15 c. 68 § 4)

[1456—]5. **Same—Fund, from what sources—Duties of treasurer and police officers—Assessments**—Said association through its officers shall have full charge, management and control of the pension fund herein provided for, which said funds shall be derived from the following sources: From gifts of real estate or personal property, rents, money or from other sources. It shall also be the duty of the city treasurer of any city affected by this act to deduct each month from the monthly pay of each member of such police department, a sum equal to one per cent of such monthly pay, and place the same to the credit of the said police pension fund; it shall be the duty of every police officer receiving any reward for services in making arrests, or otherwise, to place to the credit of the police pension fund all such rewards, and it shall be the duty of the chief of police of any such city to place to the credit of the police pension fund all moneys falling into the hands of the police that shall remain unclaimed for a period of six months, and to sell all unclaimed property falling into the hands of the police when the same shall have been unclaimed for a period of six months and place the proceeds thereof to the credit of the said police pension fund.

An amount or sum equal to one-tenth (1/10) of one mill, and not to exceed one-sixth (1/6) of one mill, in addition to the rate allowed to be levied by the charter of any city affected by this act, shall be annually assessed and levied at the time and in the manner that taxes for the other funds of such city are levied by proper officers of such city where a police relief association now exists, upon each dollar of all the taxable property in such city as the same appears on the tax records of such city and such levy of said sum for the benefit of such police relief association shall be collected and apportioned

by the proper officers of any county in which such city is located, in the same manner as are all taxes of such city. ('15 c. 68 § 5)

[1456—]6. **Same—Membership of governing board**—The governing board of said association shall consist of five members to be elected annually, who shall hold their term of office for one, two, three, four and five years, respectively, or until the successor of each is duly elected and qualified, and the mayor, chief of police, and city treasurer shall be ex-officio members of said board and the city treasurer shall be the custodian of all funds of said association and disburse the same as directed by said board. All vacancies occurring in the elective membership of said board shall be filled by a special election called for that purpose. In any such city where the police department is under the direction and supervision of a commissioner of public safety and not under the direction and supervision of the mayor of such city, said commissioner of public safety shall be ex-officio member of said board in the place of the mayor of such city. ('15 c. 68 § 6)

[1456—]7. **Same—Existing acts**—This act shall not be deemed to repeal existing acts inconsistent therewith, but shall be construed as supplemental thereto, and any paid municipal police department now operating under other police pension laws of this state, shall continue thereunder until it shall elect to come under the provisions of this act, with the consent of the city council or other governing body of said city. ('15 c. 68 § 7)

1464. Purchasing department in cities not under home rule charters—Each and every city of the first class in the state of Minnesota, not having or operating under a home-rule charter adopted pursuant to section 36 of article 4 of the constitution of the State of Minnesota, in addition to all the rights and powers heretofore granted thereto by law, is hereby authorized and empowered and shall at all times hereafter have the power and authority, acting by and through its city council, to establish and maintain a purchasing department as a branch of the city government, which department shall have full charge of the purchase by the city and the several boards of the city of all supplies and materials required for the use of the city and the several departments and boards of the city, including the board of charities and corrections, board of education, board of park commissioners and library board, of the city, and for making and maintaining public works and improvements of the city, excepting from the provisions of this act the purchase of books, periodicals, pamphlets, works of art and other like supplies for the library board and art museum of the city, and the purchase of supplies for the use of the board of park commissioners of the city at its several refectories and places of amusement, and to appoint a purchasing agent who shall be the head of such purchasing department, and to appoint all necessary assistant purchasing agents and other employes required for the proper management of such purchasing department, and to prescribe the duties of such purchasing agent, assistant purchasing agents and other employes, and by ordinance or otherwise to make all rules and regulations necessary for the conduct and management of such purchasing department. ('11 c. 201 § 1, amended '15 c. 234 § 1)

1465. Payment of current bills in cities not under home rule charters—The city council or other governing body of any city of the first class not operating under a home-rule charter, notwithstanding any provision of its charter to the contrary, may hereafter provide by ordinance for the payment of all current bills incurred by the city for goods, wares and merchandise, the purchase whereof has been duly authorized for the use of the city or any of its departments, without awaiting the formal vote of said governing body directing payment thereof. The board of park commissioners of any such city may likewise by ordinance provide for the payment of all current bills incurred by it or under its authority for goods, wares, and merchandise without awaiting the formal vote of such board directing payment thereof. ('13 c. 469 § 1, amended '15 c. 229 § 1)

1469. Civil service commission in cities not under home rule charters—In every city of the first class not organized under section 36, article 4, of the State Constitution, there shall be a civil service commission (hereinafter called the commission) of three commissioners, who shall be citizens of the state and residents of the city, and for this service each commissioner shall receive one thousand (\$1,000) dollars per annum as compensation, payable in equal monthly installments. No commissioner shall at the time of his appointment or while serving hold any other office or employment under the city, the United States, the State of Minnesota, or any public corporation or political division thereof, other than the office of notary public. The mayor shall with the consent and approval of the council or governing body of any such city expressed by a majority vote thereof appoint, as commissioners persons known to favor the principle of merit and efficiency in the public service. The terms of those first appointed, to be designated in orders of appointment, shall expire, one on the first day of February in the odd numbered year next following the year of the appointment, one on the first day of February next following the first, and one on the first day of February next following the second, and thereafter the appointment shall be for three years to fill expired terms, and in case of vacancy occurring otherwise, the appointment shall be for the unexpired term. In case of cities existing at the time of the passage of this act, the first appointment shall be made on or before the first day of July, 1913.

Each commissioner, before entering upon his duties, shall subscribe and file with the city clerk an oath for the faithful discharge of his duties. Thirty days prior to the appointment of a commissioner the mayor shall file with the city clerk, the name of the person whom he proposes to so appoint. The commissioners shall continue in office until their successors are appointed and have duly qualified. ('13 c. 105 § 1, amended '17 c. 63 § 1)

1470. Same—Civil service fund—The city council shall set apart on the first Monday in January of each year, in the city treasury, a sum not less than twenty-five (25) dollars for each thousand of the population of the city, according to the next preceding state or national census, to be known as the civil service fund and to be used only for the purposes of this act. Unexpended balances at the end of the year shall revert to the current expense fund of the city. To provide such fund, the city council shall levy a sufficient annual tax upon all the taxable property of the city, real and personal, in addition to all other taxes authorized by law. Warrants on the fund shall be drawn by order of the commission and signed by its president or vice-president and secretary and countersigned by the city comptroller. The commission shall audit its own bills and pay-rolls. The city council of any existing city shall provide like funds for the year 1917 by temporary interest bearing loans, if necessary, and add the amount thereof to the next annual tax levy. ('13 c. 105 § 2, amended '17 c. 63 § 2)

1471. Same—Meetings—Officers and employés—The commission shall first meet immediately after its appointment, at the time to be fixed by the mayor, and on the first Monday after the first day of July each year thereafter, and at each said meeting elect a president and vice-president to serve until their successors are elected. The commission at said meeting, or as soon thereafter as practicable, shall select a secretary, who shall keep the records and files of the commission and who shall be ex officio the chief examiner, and appoint other necessary employés, and fix their compensation. The commission shall from time to time fix the times of its meetings, and adopt, amend and alter rules for its procedure. All employés of the commission shall be in the classified service. ('13 c. 105 § 3, amended '17 c. 63 § 3)

1472. Same—Classified and unclassified service—The powers of the commission shall extend only to the classified service, which shall embrace the entire service of the city except the following officers and employés, which shall be known as the "unclassified service," namely:

Officers who are elected by the people; members of boards and com-

missions; the city clerk; secretaries of the several boards and commissions serving without pay; the city engineer; the chief health officer; the superintendent of police; the city assessor; superintendents, principals, supervisors of teachers and teachers in the public schools, the city attorney, the attorney of the park board; the librarian and assistants of the public library; the superintendent of parks; a landscape architect, a chief of park police, and the mayor's private secretary. None of the unclassified service shall be subject to examination or affected as to their selection, appointment, discharge or removal by the provisions of this act. ('13 c. 105 § 4, amended '17 c. 63 § 4)

1473. Same—"Employé" defined.—The term "employé," as used in this act, shall include every officer, agent, employé and other person in the classified service of the city. ('13 c. 105 § 5, amended '17 c. 63 § 5)

1474. Same—Employés to be listed, graded, etc.—Service register.—Immediately after the appointment and organization of the commission, all employés of the city of every nature excepting those in the unclassified service, shall be listed, graded and classified, and a service register prepared for the purpose, in which shall be entered, in their classes, the names, ages, compensation, period of past employment, and such other facts and data as to each employé as the commission may deem useful. To enable the commission to make such service register, the mayor, city council, each board and commission and each appointing or employing officer shall prepare and furnish to the commission complete lists of all employés in the classified service, containing the names and data aforesaid and such other information as the commission may call for. ('13 c. 105 § 6, amended '17 c. 63 § 6)

1475. Same—Rules for good service.—The commission shall, immediately after its appointment and from time to time thereafter, make, amend, alter and change rules, to promote efficiency in the city service and to carry out the purposes of this chapter. The rules shall provide, among other things, for:

a. The classification of all offices, positions and employments in the classified service.

b. Public competitive examinations to test the relative fitness of applicants.

c. Public advertisement of all examinations at least ten days in advance in two newspapers of the city of general circulation, one of which shall be the official newspaper, and posting such advertisement a like time in a conspicuous place in the city hall.

d. The creation of lists of eligible candidates after successful examination, in the order of their standing in the examination, and without reference to time of examination. Such lists shall be embraced in an eligible register. The commission may by rule provide for striking any name from the eligible register after it has been two years thereon.

e. The rejection of candidates or eligibles who, after the entry of their names, shall fail to comply with the reasonable rules and requirements of the commission in respect to age, residence, physical condition or otherwise, or who have been guilty of criminal, infamous or disgraceful conduct, or of any wilful misrepresentation, deception or fraud in connection with the examination or in connection with their applicants for place.

f. The certification of the name standing highest on the appropriate list to fill any vacancy.

g. Temporary employment without examination, but with the consent in each case of the commission, in cases of emergency and pending appointment from the eligible list; but no such temporary employment shall continue longer than sixty days, nor shall successive temporary employments be permitted for the same position.

h. Transfer from one position to a similar position in the same class or grade and for reinstatement of persons who, without fault or delinquency, are separated from the service or reduced.

i. Promotion based on competitive examination and upon records of efficiency, character, conduct and seniority. Promotion shall be deemed,

among other things, to include increase in salary, and the rules shall be framed to encourage the filling of vacancies by promotion rather than otherwise.

j. Suspension, with or without pay, for not longer than ninety days, and for leave of absence, with or without pay.

k. Appointment of unskilled laborers in the order of priority of application without examination except such tests of physical fitness as the commission may prescribe. Such certification shall be so far as practicable, for each ward of said city. Selection of street commissioners for each ward shall be made from the residents thereof only.

l. Removing names from the service register upon termination of service. The commission shall adopt such other rules not inconsistent with the provisions of this act, as may from time to time be found necessary to secure the purposes of this act. ('13 c. 105 § 7, amended '17 c. 63 § 7)

1476. Same—Notice of rules—Before the adoption, amendment or repeal of any rule, the commission shall give notice of consideration thereof by publishing and posting a brief notice, as required in section 7, stating the subject of the rule or rules to be acted on. ('13 c. 105 § 8, amended '17 c. 63 § 8)

1477. Same—Application register—The commission shall keep a second register, to be known as an application register, in which shall be entered the names and addresses and order and date of application of all applicants for examination, and the offices or employments they seek. All applications shall be upon forms prescribed by the commission. ('13 c. 105 § 9, amended '17 c. 63 § 9)

1478. Same—Notice, etc.—Offices filled from names certified—As soon as the commission has organized and made up the service register and adopted rules, as herein provided, it shall notify the mayor, the city council, the several boards and commissions, and each appointing officer of the city, and thereafter no office, position or employment shall be filled in the classified service except from names certified by the commission and in accordance with the provisions of this act. ('13 c. 105 § 10, amended '17 c. 63 § 10)

1479. Same—Removal and discharge of employes—Charges and investigation—Suspension—No officer or employee after six months continuous employment shall be removed or discharged except for cause, upon written charges and after an opportunity to be heard in his own defense. Such charges shall be investigated by or before said civil service commission or by or before some officer or board appointed by said commission to conduct such investigation. The finding and decision of such commission or investigating officer or board, when approved by said commission, shall be certified to the appointing officer, and shall be forthwith enforced by such officer. Nothing in this act shall limit the power of any officer to suspend a subordinate for a reasonable period, not exceeding ninety days for purposes of discipline. In the course of an investigation of charges, each member of the commission and of any board so appointed by it or any officer so appointed shall have the power to administer oaths and shall have power to secure by its subpoena both the attendance and testimony of witnesses and the production of books and papers relevant to such investigation. ('13 c. 105 § 11, amended '17 c. 63 § 11)

1480. Same—Duties of commission—Grades of offices, etc.—The commission shall ascertain the duties of each office, position and employment in the classified service, and designate by rule as well as may be practicable, the grade of each office, employment or position. Each grade shall comprise those offices, employments and positions having substantially similar duties. The commission shall by rule indicate the lines of promotion from each lower to higher grade wherever the experience derived in the lower tends to qualify for the higher. The commission shall prescribe standards of efficiency for each office, position and employment and for each grade, and adapt its examinations thereto. The commission shall make and keep a record of relative efficiency of each employé in the classified service other than unskilled laborers, and shall provide by rule methods for ascertaining and verifying the

fact from which such records of relative efficiency shall be made. ('13 c. 105 § 12, amended '17 c. 63 § 12)

1481. Same—Examinations—All examinations shall be impartial, fair and practical and designed only to test the relative qualifications and fitness of applicants to discharge the duties of the particular employment which they seek to fill. No question in any examination shall relate to the political or religious convictions or affiliations of the applicant. All applicants for positions of trust shall be specially examined as to moral character, sobriety and integrity, and all applicants for positions requiring special experience, skill or faithfulness shall be specially examined in respect to those qualities. Where written answers are required from applicants for positions calling for expert knowledge, the rules may provide for examination of the answers and the comparative ranking of the various applicants, without a disclosure of the names of the applicants to the examiners. The commission may furnish to the chief examiner such assistance as may be necessary. It shall be the duty of every employé of the city to act as an examiner or assistant examiner, at the request of the commission, without special compensation therefor. The members of the commission, collectively or individually, may act as examiners or assistant examiners. ('13 c. 105 § 13, amended '17 c. 63 § 13)

1482. Same—Notice of examination—Eligible register—Notice of the time, place and scope of each examination shall be given by publication and posting, as specified in section 7, and by mailing to each applicant upon the appropriate list of the application register ten days in advance. The names of those found eligible, after giving credit for character and previous successful experience, shall be entered, with their addresses and percentages, in appropriate lists of the eligible register. No name shall remain upon the eligible register more than two years without a new application, and, if the rules of the commission so require, a new examination. ('13 c. 105 § 14, amended '17 c. 63 § 14)

1483. Same—Vacancies, how filled—When a vacancy is to be filled in the classified service, the mayor, city council, board, commission or employing officer, shall notify the commission, and the commission shall certify the highest name from the appropriate list of the eligible register, except in the case of unskilled labor, and then shall certify the name first in time on the list. All vacancies shall be filled from the names so certified, and the commission shall be immediately notified of the employment and of the compensation to be paid. The names selected shall be stricken from the eligible register and transferred to the service register. All changes in grade, title or compensation shall be likewise reported. ('13 c. 105 § 15, amended '17 c. 63 § 15)

1484. Same—Exceptional qualifications—In case of a vacancy in a position requiring peculiar and exceptional qualifications of a scientific, professional or expert character, the commission, upon satisfactory evidence that competition is impracticable, and that the position can best be filled by the selection of some person of recognized attainments, without examination, and after hearing in an open, regular meeting of the commission and by the affirmative vote of all three members, may suspend competition; but no such suspension shall be general in its application to such position, and all such cases of suspension shall be reported, together with the reasons therefor in the annual reports of the commission. ('13 c. 105 § 16, amended '17 c. 63 § 16)

1485. Same—Comptroller not to pay unless names on register—After the receipt by the city comptroller of the pay roll, he shall not approve the payment of any salary, wages or compensation for any office or employment in the classified service, nor countersign any warrant therefor, unless the name of the person claiming the same appears upon the service register for the time for which such salary, wages or compensation is claimed, nor at any higher rate than shown on such register; and if the city comptroller shall

wilfully or negligently approve any payment or countersign any warrant in violation of this section, he and the sureties on his bond shall be liable to the city for the amount thereof and action may be brought therefor by any tax payer for the use of the city without making previous request to the city to sue. ('13 c. 105 § 17, amended '17 c. 63 § 17)

1486. Same—Annual report—The commission shall in each year, on or before the 30th day of January, make to the mayor and city council a report, showing as fully as may be the acts and disbursements of the commission for the preceding calendar year; the rules in force at the beginning of such year and changes made during the year; the practical effect and working of the rules and of this act; the results of the efforts to standardize services and compensation and the departures therefrom; together with such recommendations as the commission may see fit to make, to promote the efficiency and integrity of the public service. The commission shall furnish a suitable number of copies of such report to the mayor, the city council and each board and commission and each employing officer of the city. ('13 c. 105 § 18, amended '17 c. 63 § 18)

1487. Same—Commission to investigate—Charges against employes—The commission shall from time to time investigate the enforcement of this act and of the rules made under it; the action of all examiners; the duties of all departments and of all employes of the city; the efficiency of the service, and such other matters as come within the scope of this act. In the course of such investigations each commissioner shall have power to issue subpoenas and to administer oaths and to compel the attendance and testimony of witnesses and the production of books and papers relevant to the investigation. Any person who shall wilfully testify falsely shall be guilty of perjury and any person who shall refuse to obey the lawful subpoenas or directions of the commission or any commissioner in any such investigation shall be guilty of a misdemeanor. Any member of the commission shall have power of his own motion to file written charges against any employe in the classified service, and thereupon the commission shall try the charges, after not less than ten days written notice to the person accused, in the manner and with the powers prescribed in this section; but in such case the complaining commissioner shall not sit. If found guilty of breach of duty, such employe may be removed by the commission and his name be stricken from the service register. The commission may make complaint to the district court of disobedience of its subpoenas or orders under this section, and the court shall prescribe notice to the person accused and require him to obey the commission's subpoena and order, if found within the lawful powers of the commission, and punish disobedience as a contempt of the court. Witnesses shall be entitled to the same fees and mileage as for attendance upon the district court, except that any officer, agent or employe of the city who receives compensation for his services, shall not be entitled to fees or mileage. ('13 c. 105 § 19, amended '17 c. 63 § 19)

1488. Same—False statement on examination—Right to be entered upon eligible register—Any applicant for an office or employment in the classified service, who shall knowingly make any false answer or statement upon any examination in regard to any material matter upon which he is examined, shall thereby forfeit his right to be entered upon the eligible register, and, in case he has been appointed to any office or employment, shall forfeit the same and shall not within three years thereafter be eligible to any office or employment in the unclassified service of the city, nor shall he during such time be entitled to any of the examinations of the commission. ('13 c. 105 § 20, amended '17 c. 63 § 20)

1489. Same—Payment or promise of payment, etc., for position—Penalty—Any applicant for examination or for appointment to the classified service, who shall, either directly or indirectly, give, render or pay or promote to give, render or pay any money, service or other thing to any person for or on account of or in connection with his examination, appointment or proposed appointment, or who shall ask for or receive any recommendation or as-

sistance from any person in the classified or unclassified service of the city, except a statement of his previous service and the character thereof, if any, to the city, as a subordinate under such officer or employé shall be guilty of a misdemeanor. ('13 c. 105 § 21, amended '17 c. 63 § 21)

1490. Same—Assessments, etc., for political purpose—Officers, etc., soliciting, etc.—Penalty—Any officer or employé in the classified service of the city, who shall in any manner directly or indirectly solicit or receive or pay or be in any manner concerned in soliciting, receiving or paying any assessment, subscription or contribution for any party or political purpose, shall be guilty of a misdemeanor. ('13 c. 105 § 22, amended '17 c. 63 § 22)

1491. Same—Other persons soliciting, etc.—Penalty—"Solicitation" construed—Any person who shall solicit or receive, directly or indirectly, or be in any manner concerned in soliciting or receiving any assessment, contribution or payment for any political purpose whatever, from any officer or employé in the classified service of the city, shall be guilty of a misdemeanor. Provided that sections 22 [1490] and 23 [1491] hereof shall not apply to the solicitation payment or receipt of regular and fixed dues by or from a member of an established organization, but the solicitation, payment or receipt of additional dues or assessments during a political campaign shall be construed to be a violation of this act. ('13 c. 105 § 23, amended '17 c. 63 § 23)

1492. Same—Discharging employé for withholding contribution, etc.—Penalty—Any officer or employé in the classified or unclassified service of the city who shall discharge, promote or reduce in rank or in any manner change the official rank or compensation of any other officer or employé, or promise or threaten so to do, for giving or withholding or neglecting to make any service or contribution of money or other valuable thing for any party or political purpose, shall be guilty of a misdemeanor. ('13 c. 105 § 24, amended '17 c. 63 § 24)

1497. Disposal of electrical energy to private consumers—

A city furnishing electric energy to private consumers has the same rights and privileges, and is subject to the same duties and obligations, as private persons or corporations furnishing such energy (122-348, 142+319, 46 L. R. A. [N. S.] 437). Electricity, ¶11.

That one applying to such city for service used three-phase motors, for which the city could not furnish current, except at an expense of \$80 for transformers, did not relieve it of the duty to furnish service, since it could impose the expense on the applicant, if, in doing so, it did not discriminate against him. The city has a large discretion in choosing the method of adjustment of such expense (122-348, 142+319, 46 L. R. A. [N. S.] 437). Electricity, ¶11.

1506. Condemnation of land for public buildings—

The provision of this section that the city may take possession of land condemned without giving bond, but that by doing so it shall be absolutely bound to pay the award, is not applicable to proceedings taken by the city of Minneapolis under its charter, containing a provision that it may abandon condemnation proceedings at any time (135-243, 160+775). Eminent Domain, ¶246(2, 3).

1515. Same—Limit of debt—Tax levy—

123-435, 143+1124.

[1545—]1. Draining land injurious to health in cities not under home rule charters—Any city of the first class, not operating under a home rule charter, shall have power and authority to drain or fill any low, marsh or swamp lots and land in said city, which is injurious or detrimental to the public health. ('15 c. 275 § 1)

[1545—]2. Same—Assessment of cost—Whenever the city council or other governing body of said city shall determine that any low, marsh or swamp lots or land, within the limits of said city, is injurious or detrimental to the public health, it may drain or fill such lots and land with earth or other material and assess the cost, or any part of the cost thereof, upon the lots and land benefited thereby. ('15 c. 275 § 2)

[1545—]3. Same—Petition—Duty of engineer—Notice and hearing—Assessment, etc.—Whenever twenty-five or more residents and freeholders of said city file with the city clerk of said city a petition to drain or fill any low, marsh or swamp lots and land within the limits of said city, said city clerk shall present said petition to the city council of said city at its next regular

meeting. It shall thereupon be the duty of the city engineer of said city to make and file in the office of said city clerk an estimate of the cost of such improvement, stating therein the proportion of such estimated cost as to each lot or parcel of land to be drained or filled, and also a list of the several lots and parcels of land proposed to be drained or filled, and the names of the owners of the several lots or parcels of land as nearly as the city engineer can readily ascertain the same, and the amount of assessment for benefits to be levied upon each of said lots and parcels of land, and upon the lots and parcels of land adjacent thereto, or in the vicinity thereof that may be benefited by said improvement, not to exceed, however, the estimated cost of said improvement. Thereupon it shall be the duty of said city clerk to give notice to all parties interested by one publication in the official paper of said city that he will at the next meeting of the city council, or as soon thereafter as practicable, present such petition, estimate and report of the city engineer to the city council for consideration and action, which said notice shall be published at least five days before the meeting of said city council in which said petition, report and estimate are to be considered; said published notice shall contain a description of the several lots and parcels of land proposed to be drained or filled, and a description of the several lots and parcels of land proposed to be assessed for said improvement, and the amount proposed to be assessed against each of said lots and parcels of land, together with the names of the owner or owners of each of said lots and parcels of land, as nearly as the same can be readily ascertained, a copy of which notice shall be mailed by the city clerk to the owners of such lots and parcels of land so drained or filled and benefited so nearly as can be ascertained from the records in the office of the county auditor and otherwise. At said meeting of the city council at which said petition, report and estimate is to be heard, said city council may act upon the same and hear any complaint or objection as to the propriety and necessity of such improvement and assessment proposed to be levied against said lots and parcels of land, or any of them, or it may refer the matter to a committee of the council to hear said objections and complaints, and report thereon.

After such hearing the city council of said city may by resolution determine and provide that certain lots and land or any portion thereof, shall be drained or filled, and may adopt the assessment made by said city engineer, or may revise the same as they may deem just, and may assess the cost of said improvement, or any portion thereof on the lots or lands to be drained or filled, or the lots and lands adjacent thereto or in the vicinity thereof which said city council may determine to be benefited by said improvement, and in and by said resolution the city council shall estimate and fix upon the cost of such improvement and assess and levy such cost, or any portion thereof, upon the lots and parcels of land benefited by said improvement to the amount of such benefit, and the city council shall cause to be made and shall adopt an assessment roll thereof in any form which the city council may deem proper. Said assessment roll shall be made up and returned to the county auditor of the county in which said city is located, and said assessment shall be spread upon the books of said county auditor and all other proceedings had as in the case of assessment for sewers, water mains, or other local improvements; provided, however, that when such assessment roll shall have been delivered to the county auditor of said county, said county auditor shall divide each assessment for such improvement into five equal parts, as nearly as the same can be divided, and shall in the books of his office extend said assessment over five successive years succeeding to the year in which said assessment shall have been ordered, that is to say: said assessments are to be paid in five equal annual installments, with interest to be paid annually on each one of said assessments after the first installment, at the rate of six per cent per annum, and the owner or owners, or other persons whose duty or right it may be to pay such special assessment, shall have the right to pay the same at any time after the first year's installment becomes due, or they may pay the same in said five annual installments, with interest on each one of said deferred installments to be paid annually at the time of paying the

assessment due each year; and the auditor of said county shall at the time of extending such special assessment on the tax list in such parallel columns for such assessment, add to the amount of each assessment for each year after the first installment, interest on each installment remaining unpaid, at said rate of six per cent per annum on the whole of such unpaid installments, and said interest on the whole of said installments shall be paid each year at the same time, and in the same manner that said installments are to be paid. ('15 c. 275 § 3)

[1545—]4. **Same—Certificates of indebtedness**—The city council for the purpose of realizing the funds for making such improvement may issue and sell special certificates of indebtedness, which shall entitle the holder thereof to all sums realized upon such assessment, or if deemed advisable a series of two or more certificates against any one assessment which shall entitle the several holders thereof to share pro rata all sums realized upon such assessments, including interest and penalties, and the city council may bind the city to make good deficiencies in the collection up to but not exceeding the principal and interest at the rate fixed as hereinafter provided. If the city because of any such guaranty shall redeem any certificate it shall thereupon be subrogated to the holders' rights. For the purpose of such guaranty penalties collected shall be credited upon deficiencies of principal and interest before the city shall be liable. Such certificates shall bear interest at a rate to be fixed by the city council of said city not exceeding, however, six per cent per annum, and such certificates may be sold at public or private sale, but for not less than the par value thereof. The city's liability upon such guaranty shall not be taken into account as a part of its indebtedness until the amount of such deficiency of collection, defined as aforesaid, is determined and then only for the amount of such deficiency. ('15 c. 275 § 4)

1546. Replacing sidewalks—

Duty to keep sidewalks in safe condition, and contributory negligence of person injured (203 Fed. 35, 121 C. C. A. 371). Municipal Corporations, §755(1), 803(1).
A city held to have had notice of a defect in a sidewalk in time to have repaired it before an accident (120-491, 148-304). Municipal Corporations, §819(6).

[1546—]1. **Paving arterial streets in cities not under home rule charters—Special assessments and taxes**—The city council or other governing body or [of] any city of the first class not operating under a home rule charter is hereby authorized, notwithstanding any provision in the charter of such city to the contrary, to determine in and by its resolution directing that any arterial street therein or any part of either be paved, what proportion of the cost of such paving shall be defrayed by a special assessment upon the real property fronting thereon. Such proportion, however, shall in no case be less than one-half of the cost to the city of paving that part of the arterial street lying between the center line thereof and such abutting property. ('15 c. 278 § 1)

[1546—]2. **Same—Assessment, how levied—Remaining cost, how paid**—Whenever the proportion to be so assessed is determined in the manner aforesaid, the assessment shall be levied accordingly and the remaining cost of such paving shall be paid by the city out of any funds in its treasury, not derived from such special assessments, available for paving purposes. ('15 c. 278 § 2)

[1546—]3. **Same—Tax levy**—In all such cases the council or other governing body of such city may levy with the other city taxes a tax sufficient to pay the amount not so assessed upon abutting lands on all property within the city subject to general taxation, and may direct into what fund the proceeds of said tax shall be paid. ('15 c. 278 § 3)

[1546—]4. **Same—Application to what cities**—This act shall not apply to any city whose inhabitants have adopted a charter pursuant to Section 36, Article 4, of the state constitution. ('15 c. 278 § 4)

[1546—]5. **Streets and alleys not used by public in cities not under home rule charters—Leases**—Every city of the first class not operating under a home rule charter is hereby authorized and empowered, in any and all cases where the tracts of ground have, in the platting of land in such city or otherwise, been dedicated to public use, to be used for streets, alleys or other simi-

lar public purposes, other than parks or parkways, and such tracts of ground or any part thereof by reason of change of grade of railroads or of other streets or alleys crossing such railroads or in any other way, have become, at least for a number of years in the future, unfitted for use by the public for the purpose for which they were dedicated to public use, to leave to the owner or owners of property abutting thereon the surface of such portion of streets or alleys or tracts of ground as cannot be used by said city for the purposes for which such ground was dedicated, or grant the right in the nature of a lease to erect structures overhead across the same, for a short period or permanently, or under the surface thereof, in the manner and under the conditions hereinafter set forth. ('15 c. 291 § 1)

[1546—]6. Same—Application for lease, etc.—Procedure of council—Rental, etc.—Whenever application shall be made to the city council or common council of any such city to lease, or to vacate, any such tract of ground as is hereinbefore referred to, the question of the advisability of said city's making such lease or vacation shall be referred to the appropriate committee of said council; and if after a full consideration of said question, including the viewing of the premises in question by the whole committee in a body, said committee shall report back to said council that it is to the interest of said city, and the citizens thereof, to make the proposed lease, then, and in every such case, if the said council shall by a two-thirds vote of the whole membership of such body, determine to proceed with such lease, the question as to the amount of yearly rental to be charged by said city for the use of such street, alley or tract of ground or portion thereof shall be referred to five commissioners appointed in the same manner as commissioners are appointed to assess benefits and award damages in case of opening new streets or alleys in said city, and such commissioners shall in all such cases receive for their services the same fees as they receive for services in proceedings for the opening of new streets or alleys; provided, that the city council or common council of the city taking proceedings to lease such streets, alleys or tracts of ground or portions thereof, as are referred to in section one [1546—5] of this act shall not be bound to lease for the rental decided upon by such commissioners, but said council may, after hearing the report of said commissioners, by a majority vote, refuse altogether to make such release or may require the person leasing such street or alley or tract of ground to pay such larger sum for such lease as the said council may determine, if in the judgment of a majority of said council a larger rental or price should in any particular case or cases be paid; but no rental shall in any case be any less than the amount recommended by the commissioners as aforesaid; nor shall such rental in any case be greater than six (6) per centum per annum on one-sixth (1-6) of the value of the fee of the land so leased; and in case of the renting of any such street or alley or tract of ground the city council may impose any such conditions as they, in their judgment, shall deem necessary, relative to reserving rights to put in, at any time, in such street, alley or tracts of ground either sewers or water mains that may be needed, and the necessary manholes, hydrants, and other appliances connected with sewers or water mains, and also any conduits that may be needed by the city itself for wires or cables to conduct electricity for any city purposes. ('15 c. 291 § 2)

[1546—]7. Same—Disposition of rentals—All money paid for rental under the provisions of this act shall be paid into the ward fund of the ward in which such street, alley or tract is located, or, if located in more than one ward, then into the ward funds of the respective wards in which such street, alley or tract is located in amounts proportionate to the area thereof located in each of such wards. ('15 c. 291 § 3)

[1546—]8. Same—Damages—If in any case where the lease of any such street, alley or tract of ground is proposed, the use of such street, alley or tract by the general public for which it was dedicated to public use is to all intents and purposes impossible, but nevertheless some persons shall be specially inconvenienced or damaged by such lease, if made, then and in every such case the commissioners referred to in section two hereof [1546—6] shall

determine the amount of damages to which each of such persons specially damaged is entitled, and make report to the council; and said council shall require the person to whom said lease is made, and before the same is consummated, to pay to each of said persons specially damaged a sum not less than the amount determined by said commissioners, and such larger sum, if any, as the said council may determine is fairly and justly due as damages to the various persons respectively who may be specially damaged by the lease in question; provided that nothing in this act shall be construed as cutting off or abridging the right of any one damaged by such lease to apply to the courts for damages or for such other relief in such case as the courts may be empowered to grant. ('15 c. 291 § 4)

[1546—]9. **Taxes for roadways in arterial streets in cities not under home rule charters**—The city council, or other governing body of any city of the first class not organized pursuant to section 36, article 4, of the state constitution, is hereby authorized to levy annually, with and as part of the general taxes of each of the years 1917, 1918, 1919, 1920, 1921, and 1922, a tax not exceeding one mill on each dollar of the assessed valuation of all property, real and personal, therein subject to general taxation, for the purpose of constructing permanent roadways not over twenty-four feet in width in arterial streets, as hereinafter defined, but not more than 40% of the expense of paving any street shall be paid out of this fund. ('17 c. 218 § 1)

[1546—]10. **Same—"Arterial street" defined—How designated**—No street shall be deemed an arterial street unless it forms a part of a main thoroughfare leading from the city boundary to the populous districts of the city. Before levying any tax hereunder, the council shall designate the arterial streets upon which the proceeds of the tax may be expended and the streets so designated shall constitute the system of arterial streets on which such taxes may be expended and the system so designated shall not be changed during the life of this act. ('17 c. 218 § 2)

[1546—]11. **Same—Estimate and rate**—The city council shall on or before the first day of September of each year, estimate the amount of such tax necessary to be levied with the taxes of that year and the amount of such levy to be expended upon each arterial street and cause a certified copy of such estimate to be transmitted to the board of tax levy. The board of tax levy may fix the maximum rate to be levied for such year and no tax shall be levied except as authorized by the board of tax levy. ('17 c. 218 § 3)

[1546—]12. **Same—Taxes, how collected and paid**—A certified copy of the resolution levying such tax shall be transmitted to the county auditor and the amount of the levy shall be included with and as part of the general taxes for the state, city and county purposes for such year and collected therewith and payment thereof shall be enforced in the same manner and with like penalties, interest and costs. ('17 c. 218 § 4)

[1546—]13. **Good roads funds for paving in cities not under home rule charters**—Each city of this state now or hereafter having over fifty thousand inhabitants and not governed under a charter adopted pursuant to section 36, article 4 of the state constitution is hereby authorized and empowered, acting through its city council, to appropriate an amount not exceeding fifteen thousand dollars from the so-called good roads funds of the city heretofore raised by taxation under and pursuant to Chapter 368, General Laws of 1909, and Chapter 175, General Laws of 1913, and to use such amount not exceeding fifteen thousand dollars for the purpose of defraying the cost of paving any of the public streets or avenues in such city laid and constructed during the year 1914, in such manner and to such extent as the city council of such city shall deem best, notwithstanding any express or implied limitations in either of said acts to the contrary, and to annul and cancel in whole or in pro rata parts according to frontage the special assessments made on abutting property for the cost of such paving to an amount not exceeding fifteen thousand dollars, and to authorize and require the county auditor of the county in which such city is situated to cancel upon the tax lists and tax books in his office and in the office of the county treasurer the special assessments or por-

tions thereof canceled and annulled by the city council pursuant to this act. The amount of any portions of any such assessments so canceled by the city council which shall be paid by owners of abutting property assessed therefor may be refunded and repaid from said amount of fifteen thousand dollars appropriated as herein provided to such owners respectively paying such assessments, and the remaining balance of said amount of fifteen thousand dollars so appropriated as herein provided equal to the amounts of any and all portions of any such assessments so canceled by the city council and not paid by owners of abutting property assessed therefor may be transferred by the city council and credited to the permanent improvement revolving fund of the city to reimburse said fund in whole or in part for the cost of such paving. ('15 c. 328 § 1)

[1547—]1. Fire departments in cities not under home rule charters—Hours of service—No member of the fire department, in cities of the first class, not operating under a home rule charter shall be compelled or required to be on duty more than fourteen hours in any one day, except days for changing from the day shift to the night shift. That no member of the fire department, in any city of the first class, not operating under a home rule charter shall be subject to call, or perform any duties in said department out of his regular hours, as defined in this section ('17 c. 91 § 1)

Section 3 repeals inconsistent acts, etc.

[1547—]2. Same—Duty of council—Rules—Temporary firemen—That the councils or other governing bodies of such cities shall be required to take such steps as are necessary to provide means and money to meet the expenditures which shall be necessary to carry out the provisions of this act. Provided, however, that the chief of fire department may establish such rules as may be necessary to ensure the attendance of members in case of a great conflagration, or unusual fire or fires, and in such cases the chief of the fire department may require each and every member of his department to assist in the protection of life and property, notwithstanding said member, or fireman, has been relieved from duty under the provisions of this act. Provided, further, that none of the provisions of this act shall be construed to apply to any vacation now, or hereafter granted to any fireman or firemen by the city or municipality. In case of riot, or other like emergency, the chief of fire department may appoint additional firemen and officers for temporary service, who need not be in the classified list of the department. Such additional firemen, or officers, to be employed only for the time during which the emergency exists. ('17 c. 91 § 2)

1550. Same—Property, how acquired—

A city cannot maintain condemnation proceedings to acquire land, ostensibly for an alley, with the intention of devoting the land to a purely private purpose in running a switch track to the land of an individual; and parol evidence is admissible to show that such is the purpose of the city, and that the statement in the petition that the property is sought to be condemned for an alley is not true (183-221, 158+240). Eminent Domain, §=13, 196.

1551. Same—Condemnation, how conducted, etc.—

Separate assessments for distinct interests in same property (128-432, 151+144). Eminent Domain, §=157.

[1556—]1. One-eighth mill tax for playgrounds in cities not under home rule charters—The Board of Park Commissioners of each city of the first class not organized under Section 36, Article 4 of the State Constitution, in addition to all powers and authority already possessed is hereby authorized and empowered and it shall be its duty to levy annually upon all the property, real and personal, of the city a tax not exceeding one-eighth of a mill upon each dollar of the assessed valuation for the purpose of acquiring, equipping, maintaining and governing playgrounds for the public use as a part of the system of parks and parkways of the city, provided that credits and real estate mortgages shall be subject only to the levy and collection of taxes now or hereafter prescribed by law, and provided further that the rate of such levy shall not exceed the maximum fixed by the board of tax levy in any year. ('15 c. 230 § 1)

[1556—]2. **Same—How certified, collected and paid**—All taxes so levied shall be certified to the county auditor of the county in which the city is situated on or before the tenth day of October of each year, and shall be included in and as a part of the general taxes for state, city and county purposes, and the same shall be collected with and the payment thereof enforced in the same manner as such general taxes and with like penalties and interest. Such taxes when collected shall be paid to the city treasurer and placed in a fund to be known as playgrounds fund, and shall be paid out by warrants ordered by the board of park commissioners and signed by the president and secretary of such board and countersigned by the city comptroller. ('15 c. 230 § 2)

[1556—]3. **Same—Ordinances**—The board of park commissioners shall have power to adopt ordinances to secure the quiet, orderly and suitable use and enjoyment of such playgrounds by the people and fix and ordain penalties for the violation thereof, which ordinances shall take effect from and after the publication thereof in the official newspaper of the city. The penalties for such violation may include fines not exceeding one hundred dollars (\$100) or confinement in the city workhouse not exceeding ninety (90) days. ('15 c. 230 § 3)

[1556—]4. **One-twentieth mill tax for shade trees in cities not under home rule charters**—The Board of Park Commissioners of each city of the first class not organized under Section 36, Article 4 of the State Constitution in addition to all powers and authority already possessed is hereby authorized and empowered and it shall be its duty to levy annually upon all the property, real and personal, of the city a tax not exceeding one-twentieth of a mill upon each dollar of the assessed valuation for the purpose of protecting, caring for, replacing and maintaining the shade and ornamental trees and shrubbery in the streets and avenues of the city—provided that credits and real estate mortgages shall be subject only to the levy and collection of taxes now or hereafter prescribed by law, and provided further that the rate of such levy shall not exceed the maximum fixed by the Board of Tax Levy in any year. ('15 c. 231 § 1)

[1556—]5. **Same—How certified, collected and paid**—All taxes so levied shall be certified to the county auditor of the county in which the city is situated on or before the tenth day of October of each year, and shall be included in and as a part of the general taxes for state, city and county purposes, and the same shall be collected with and the payment thereof enforced in the same manner as such general taxes and with like penalties and interest. Such taxes when collected shall be paid to the City Treasurer and placed in a fund to be known as the Street Forestry Fund, and shall be paid out by warrants ordered by the Board of Park Commissioners and signed by the President and Secretary of such Board and countersigned by the City Comptroller. ('15 c. 231 § 2)

[1565—]1. **Board of park commissioners in cities not under home rule charters**—In each city of the State of Minnesota now or hereafter having more than fifty thousand (50,000) inhabitants and not having a home rule charter, its board of park commissioners shall on and after the first Monday in January, 1917, consist of the mayor of the city, the chairman of the committee on roads and bridges of the city council and the chairman of the committee on public grounds and buildings of the city council, and additional members as provided in Section 2. ('15 c. 166 § 1, amended '15 c. 277 § 1)

1915 c. 166 § 5 repeals inconsistent acts, etc.

[1565—]2. **Same—Election**—At the general election of 1916 the electors residing within the city limits of each odd-numbered senatorial district, any part of which lies within the boundaries of the city, shall elect one commissioner for a term of six (6) years; and at the general election of 1918 the electors residing within the city limits of each even numbered senatorial district, any portion of which lies within the boundaries of the city, shall

elect one commissioner for a term of six (6) years; and at the general election of 1920 the electors of the entire city shall elect four commissioners at large for a term of six (6) years.

The successors of each of the commissioners provided for in this section shall be elected in the same manner at the general election next preceding the expiration of their several terms. All elected commissioners in office at the time of the passage of this act shall serve out their respective terms. ('15 c. 166 § 2, amended '15 c. 277 § 2)

[1565—]3. Same—When to enter on duties—Each of such commissioners shall enter upon the duties of his office on the first Monday of January next following his election, and serve until his successor is elected and qualified. ('15 c. 166 § 3)

[1565—]4. Same—Vacancies—Whenever a vacancy occurs in the office of an elected commissioner, it shall be filled by the board. ('15 c. 166 § 4)

[1565—]5. Sprinkling and oiling parkways in cities not under home rule charters—Assessments—The board of park commissioners of each city of the first class not organized under Section 36, Article 4 of the state constitution, shall have power to sprinkle or oil the parkways of said city, or any part thereof, and to levy and assess the cost of said sprinkling or oiling upon the lots and lands fronting upon that part of the parkway so sprinkled or oiled by an equal rate per front foot of said lots and lands. No assessment shall be levied against property outside of the city limits of said city. ('15 c. 361 § 1)

[1565—]6. Same—Assessments how certified, collected, and paid—The board of park commissioners shall cause each such assessment to be certified, on or before the tenth day of October of each year, to the county auditor of the county in which the city is situated and the county auditor shall include the same with and as a part of the annual taxes for the current year upon the same lands, and such assessment shall be collected and the payment thereof enforced with and as a part of such annual taxes and with like interest, penalties and costs. Such taxes when collected shall be paid to the city treasurer and placed in the city park fund. ('15 c. 361 § 2)

1566. System of streets, parks and parkways in cities not under home rule charters—Acquisition of lands—Duties of council and park commissioners—The city council and the board of park commissioners of any city of the first class may by concurrent resolution adopted by a majority vote of each body, designate lands to be acquired for a system of streets, parks and parkways, and determine that such land shall be acquired by proceedings under this act, to be conducted either by the city council or the board of park commissioners, as such resolution shall specify. If said proceedings are taken by the board of park commissioners, the duties herein specified to be performed by the city clerk, the city engineer and the city attorney respectively, shall be performed by the secretary, the engineer and the attorney elected and employed by the board of park commissioners, and the powers hereinafter specified to be exercised by the city council may for the purposes of this act be exercised by the board of park commissioners. The term system of streets, parks and parkways, as used herein, shall embrace any body of contiguous land of whatever shape or area, designed ultimately to be used in part for streets and in part for parks or parkways, and the concurrent resolution shall designate what part is for streets, what part for parks and what part for parkways. Whenever the city council desires to take or improve, or take and improve, land for street purposes alone, it may proceed under this act for that purpose without the concurrence of the board of park commissioners, and whenever the board of park commissioners desires to take or improve, or to take and improve, land for parks and parkways alone, or either, it may proceed under this act without the concurrence of the city council. ('11 c. 185 § 1, amended '17 c. 103 § 2)

1917 c. 103 § 1 amends the title of 1911 c. 185, as amended by 1913 c. 345 § 7.

1567. Same—Duty of engineer—Appointment, powers and duties of commissioners—Report—Duties and powers of council—Award and assessment—Assessment roll—

In proceedings to condemn land for widening a street, the plat and survey showed the character, course, and extent of the improvement, and the property to be taken or interfered with. The plat named "H. K. Feye" as the owner of a tract, a part of which was proposed to be taken, of which plaintiff was the record owner of a four-fifths interest, but it was not named as such owner, either in the plat or published notices, and no award was made to it, the only award made and confirmed being to Feye. Held, that the provisions of this section as to notice was complied with, the omission of plaintiff's name not being a fatal departure, in view of the provision that the names of owners be stated "so far as they can readily be ascertained" (161+231). Eminent Domain, §181.

Such proceedings were not void as to plaintiff's interest in the land, as a denial of due process of law, or as the taking of its land without compensation (161+231).

Where the plat and survey, and the notices given and published, clearly show that the entire interest in a strip of land sought to be taken for widening a street is intended to be appropriated, the owner of an undivided interest in the land, whose name is not stated in the proceedings, cannot contend that the only interest acquired was that of the person named as owner (161+231). Eminent Domain, §243(1).

1568. Same—Objections to confirmation—Appeal to district court—Commissioners to reappraise—Appeal to supreme court—

161+231; note under § 1567, ante.

A notice of objection held sufficient, though not in the precise words of the statute (128-531, 150+398). Eminent Domain, §235.

[1568—]1. **Same—Awards on appeal in excess of or less than awards appealed from—Increase or decrease, how paid—Commissioners—Increase and decrease, how assessed—Assessment lists—Objections and appeals—**Whenever any award or awards of damages made to appellants upon any such appeal or appeals to the district court shall exceed the amount of the award or awards appealed from, and when any assessment or assessments of benefits made in respect to any appellant or appellants upon such appeal or appeals shall be less than the amount of the assessment or assessments of benefits appealed from, the amount of such increase in the amount of said award or awards of damages and the amount of such decrease in such assessment or assessments of benefits may be paid by the city from the permanent improvement fund or any fund of the city available therefor, or the city council may cause the same to be assessed upon and against any property benefited by the proposed improvements in addition and without prejudice to prior assessments made thereon in said proceedings, and may refer the matter to the commissioners theretofore appointed by the council in such proceeding or to new commissioners to be appointed by the city council. Such commissioners, whether new or old, shall have the same qualifications as required of commissioners appointed by Section 2 [1567] hereof and such commissioners shall take oath to faithfully discharge their duties as such commissioners and give notice of the time and place when and where they will meet to hear persons interested and assess the amounts of such increase of awards of damages and decrease of assessments of benefits upon the land and property benefited by such proposed improvements. Such commissioners shall meet at the time and place so designated in their notice and hear all persons interested and assess the amount of such increased awards of damages and decreased assessments of benefits upon the property benefited by such proposed improvements, in proportion to such benefits, but in no case shall the amount of such assessment exceed the actual benefit to the lot or parcel of land so assessed, and said commissioners shall prepare and report to the city council an assessment list of the assessment so made by the commissioners, containing a brief description of each piece of property assessed, the name of the owners thereof if known, and the amount assessed against the same. Said commissioners shall file such assessment list with the city clerk, who shall present such list to the city council for consideration. A brief minute of the presentation of such assessment list to the city council shall be made and published in the record of the proceedings of the city council, which shall be held to be sufficient notice to all persons concerned. Such assessment list shall lie over without action thereon by the city council until the next regular meeting of the

council which will occur at least one week thereafter, at which time or any meeting thereafter the city council may confirm such assessments and assessment roll or send the same back to the commissioners for further consideration and report thereon. Any person interested who is dissatisfied with the amount of any such assessment may file objections thereto and may appeal from the confirmation of such assessment by the city council to the district court in like manner and with like proceedings as provided in Section 3 hereof [1568] in respect to filing objections and taking appeals from original appeals made in such proceedings. Any decrease made in any such assessments upon any such appeals may be paid by the city from the permanent improvement fund or any fund of the city available therefor, or cause the same to be reassessed as hereinabove provided. ('11 c. 185, amended '13 c. 345; '15 c. 86 § 1)

1915 c. 86 § 1 amends 1911 c. 185, as amended by 1913 c. 385, by inserting after § 3 of said chapter 185 as amended the section above set forth.

1570. Same—Clerk to transmit assessment roll to county auditor—Installments, how made up and entered—Grounds of defense, etc.—The city clerk shall transmit a certified copy of such assessment roll to the county auditor of the county in which the land lies, and the county auditor shall include 5 per cent of the principal amount of such assessment with and as part of the taxes upon each parcel for each year for twenty years, together with annual interest at the rate ascertained, as hereinafter provided. The city council and board of park commissioners may, however, by such concurrent resolution, determine that the amount of such assessment shall be collected in five or ten equal annual installments instead of twenty, and in such case the county auditor shall include a corresponding per cent of the principal amount of such assessment with and as part of the taxes of each year, together with such annual interest until the whole is collected. With the first installment the auditor shall include interest upon the entire assessment from the date of the assessment to the time when the tax books including the first installment are delivered by the county auditor to the county treasurer, and thereafter the auditor shall include in the taxes for each year one of such installments, together with one year's interest upon such installment, and all subsequent installments at the same rate, each of which, together with such interest, shall be collected with the annual taxes upon such land, together with like penalties and interest in case of default, all of which shall be collected with and enforced as the annual taxes and credited to the proper city fund. Any parcel assessed may be discharged from the assessment at any time after the receipt of the assessment by the county auditor by paying all installments that have gone into the hands of the county treasurer as aforesaid, with accrued interest, penalties and costs, as above provided, and by paying all subsequent installments; or any parcel assessed may be discharged from the assessment by presenting certificates or bonds sold against such assessments as herein provided sufficient in amount to cover all installments due on such parcel and accrued interest, penalties and costs, and all installments yet to accrue, by surrendering such certificates or bonds to the county treasurer for cancellation or having endorsed thereon such installments, interest, penalties and costs. Said assessment shall be a lien on the land from the time of the making thereof as against the owner and every person in any way interested in the land. The owner of the land and any person interested therein may defend against such assessment at the time of application for judgment in the regular proceedings for the enforcement of delinquent taxes, but such assessment shall not be deemed invalid because of any irregularity, provided the notices have been published substantially as required, and no defense shall be allowed except upon the ground that the cost of the improvement is substantially less than the amount of the assessment, and then only to the extent of the difference between the assessment and the actual cost. Assessments made under this act shall be called special street and parkway assessments of the city of and numbered consecutively. Whenever an assessment is certified as aforesaid by the city clerk to the county auditor, a duplicate thereof shall be sent to the city comptroller, and all such assessments

shall be sufficient [sufficiently] identified by the name and number as aforesaid. ('11 c. 185 § 5, amended '17 c. 103 § 3)

1571. Same—Method of improvement—Assessments for benefits, etc.—Existing streets, parks, etc.—The city council and park commissioners may by such concurrent resolution specify the method of improving any such street, park or parkway, including grading, planting, paving, curb, gutter and sidewalk, as well as sewer and water mains where necessary, and in the case of parks, the necessary structures and apparatus for playgrounds and general park uses. The city engineer shall estimate the cost of each item of such improvement separately and submit the estimate with the plat. Such estimates shall be for not to exceed six inch water mains and not to exceed twenty-four inch sewers. The city council shall examine such estimates and after modifying, if necessary, find and adopt an estimate of such cost. The city council, in appointing commissioners, shall recite said estimate, and the commissioners shall assess the amount thereof upon such lots and parcels of land in the city as they shall deem specially benefited in proportion to such benefits, and not exceeding the actual benefit to any parcel, and add the same to the benefits assessed under section 2 of this [1567] act and report the net result of damages or benefits as required by said section 2 [1567], and with like proceedings thereafter. Provided that if in any proceeding under this act the actual cost of the improvement of any such street, park or parkway in the manner herein designated is less than the estimated cost thereof as found and adopted by the city council, the city council may direct the distribution of such excess as follows: In case the assessments in any such proceeding have not been entirely collected, or in case the city council deem that any such assessments may not be fully collected, the city council may direct the city comptroller to retain in the fund in such proceeding a sum sufficient, in the judgment of said city council, to cover the deficiencies in the collection of such assessments, and the city council may direct that the balance of such excess of estimated cost shall be disposed of in the manner hereinafter provided. The city council may direct the city comptroller to certify the amount of such balance to the county auditor. The county auditor shall thereupon deduct such amount from the first installment of the assessment to be collected after the receipt of such certificate. Such deduction shall be made from the assessment against each piece or parcel of property in the proportion that such excess as certified by the city comptroller bears to the total of such installment of the assessment. If such balance as certified exceeds one installment, it may also be deducted in like manner from succeeding installments until the same is fully deducted.

Provided further that if any portion of the damages and cost of such improvement has been paid by the city, the city council shall direct the city comptroller to certify to the county auditor only such percentage of such balance or excess of estimated cost as shall be equal to the percentage of the total estimated cost of the improvement and damages which has been or is assessed against benefited property. No such certificate shall be directed by the council or issued to the county auditor until after a report from the city engineer that the work under any such proceeding has been completed and each item of damage or cost in such proceeding paid. In any such proceeding where there is or may be such an excess of estimated cost, and there is or shall be a balance in the fund in such proceeding over and above the actual cost, the city council shall be entitled to withdraw from such fund a percentage of such fund equal to the percentage of the cost of such improvement paid by the city, and cause such percentage to be deposited in the fund from which it was originally drawn or taken by such city council.

Any existing street, park or parkway may be improved and the expense thereof assessed and raised in the manner provided by this chapter, including any or all of the following improvements to-wit, widening, grading, planting, pavements, sidewalks, curb and gutter sewers and water mains, and in the case of parks the necessary structures and apparatus for playgrounds and general park uses. In case of streets or parkways exceeding 80 feet in width, the resolution may, for the purpose of facilitating connections with private prop-

erty and obviating the necessity of cutting or breaking into the improvements, order a double water main or a double sewer, one on either side of the street or parkway, or adopt such other arrangement or device as may seem most feasible. ('11 c. 185 § 6, amended '17 c. 103 § 4)

[1571—]1. **Same—Total cost not to be less than \$3,000**—No lands shall be acquired hereunder for streets, parks or parkways, and no proceedings shall be had for the improvement of streets, parks or parkways, where the total cost thereof shall be less than \$3,000.00. ('17 c. 103 § 5)

1572. **Same—Title acquired—**

161+231; note under § 1567, ante.

1575. **Same—Certificates of indebtedness—Guaranty—Interest**—The city council, for the purpose of realizing the funds for making such improvement and paying such damages, may issue and sell special certificates of indebtedness, or special street or parkway improvement bonds, as they may decide, which shall entitle the holder thereof to all sums realized upon any such assessment, or if deemed advisable, a series of two or more certificates or bonds against any one assessment, or against the assessments in two or more different proceedings, the principal and interest being payable at fixed dates out of the fund collected from such assessments, including interest and penalties, and the whole of such fund or funds is hereby pledged for the pro rata payment of such certificates or bonds and the interest thereon, as they severally become due. Such certificates or bonds may be made payable to the bearer, with interest coupons attached, and the city council may bind the city to make good deficiencies in the collection up to, but not exceeding, the principal and interest at the rate fixed as hereinafter provided and for the time specified in Section 5 [1570]. If the city, because of any such guaranty shall redeem any certificate or bond, it shall thereupon be subrogated to the holder's rights. For the purpose of such guaranty, penalties collected shall be credited upon deficiencies of principal and interest before the city shall be liable. Such certificates or bonds shall be sold at public sale or by sealed proposals at a meeting of which at least two weeks' published notice shall be given, to the purchaser who will pay the par value thereof at the lowest interest rate, and the certificates or bonds shall be drawn accordingly, but the rate of interest shall in no case exceed five per cent per annum, payable annually or semi-annually. The city clerk shall certify to the county auditor the rate of interest so determined, and interest shall be computed upon the assessments at such annual rate, in accordance with the terms of Section 5. ('11 c. 185 § 10, amended '17 c. 11 § 1)

[1578—]1. **Regulating use of parks in cities not under home rule charters**—The Board of Park Commissioners of each city of the first class not organized under Section 36, Article 4 of the State Constitution, shall have power to regulate the use of parks and parkways heretofore actually acquired in the name of the city whether within or without the corporate boundaries, and may adopt ordinances to secure the quiet, orderly and suitable use and enjoyment of such parks and parkways by the people and fix and ordain penalties for the violation thereof, which ordinances shall take effect from and after the publication thereof in the official newspaper of the city. The penalties for such violation may include fines not exceeding one hundred dollars (\$100) or confinement in the city workhouse not exceeding ninety (90) days. ('15 c. 132 § 1)

[1578—]2. **Same—Use of waters of lakes**—Whenever such parks or parkways, or both, embrace the entire shore of any navigable lake, the board of park commissioners may regulate the use of the waters of such lake, and for that purpose adopt ordinances and prescribe penalties for the violation as provided in Section 1 [1578—1]. ('15 c. 132 § 2)

[1578—]3. **Annual tax for park and parkway purposes in cities not under home rule charters**—Any city of the first class, not organized under section 36, article 4 of the State Constitution, is hereby authorized in addition to and without repeal or modification of powers already existing in that behalf, to

levy annually a tax for park and parkway purposes upon all the taxable property in the city, real and personal, not exceeding one-half of one mill upon the dollar of the assessed valuation of such property. No such tax shall be levied beyond the maximum rate which may from time to time be fixed for that purpose by the board of tax levy. ('17 c. 393 § 1)

[1578—]4. **Same—Levy—How collected, etc.**—The board of park commissioners or other body having the general maintenance and government of parks and parkways of the city shall by resolution make such levy on or before the first day of November of each year and transmit a duly certified copy of such resolution to the county auditor and such levy shall be included in and collected with the general taxes for state, county and city purposes for the current year, and shall be collected in the same manner and with the same penalties, interest and costs, and when collected shall be paid over to the city treasurer and placed in the city park fund. ('17 c. 393 § 2)

1579. Condemnation of lands for public playgrounds—

The provision of this section as to the right of the city to take possession under penalty of standing absolutely bound to pay the damages awarded is not applicable to a proceeding instituted by the city of Minneapolis under its charter, a provision in which permits the city to abandon a condemnation proceeding at any time during its pendency (135-243, 160+775). Eminent Domain, ¶246(2, 3).

1581. Residence districts—Council may designate—

Prohibiting owner from erecting four-family flat building within residential district, on ground of unhealthful congestion, added fire risk, and more difficult police supervision, was beyond police power and void (162+477). Municipal Corporations, ¶601.

An ordinance establishing a residential district and prohibiting the erection therein of hotels, stores, factories, warehouses, dry-cleaning plants, public garages or stables, or any industrial establishment or any business whatsoever, held, as applied to one who had erected a store building under a permit duly issued, and who applied for a permit to install an electric lighting system therein as required by ordinance, invalid, as taking property without compensation and as depriving him of property without due process of law, such ordinance not being within the police power of the city to restrict the erection of buildings injurious to the public welfare (158+1017). Constitutional Law, ¶278(1); Eminent Domain, ¶2(1); Municipal Corporations, ¶625.

1598. Bonds for certain purposes authorized in cities not under home rule charters—

That a resolution authorizing the issuance of bonds was passed by the council before the final order for the improvement had been approved by the mayor and published did not make the resolution invalid (123-1, 142+886). Municipal Corporations, ¶917(1).

[1623—]1. **Gifts for medical dispensaries and libraries in cities under home rule charters**—That any city in the state of Minnesota now or hereafter having a population of over fifty thousand inhabitants, shall, in addition to all other powers now possessed by it, have, and it is hereby given, power and authority to accept in trust, gifts, devise and bequests of money or property, whether the same be donated, devised or bequeathed prior or subsequent to the passage of this act, for the purpose of founding, establishing and maintaining free medical dispensaries for the benefit of the poor of any such city or of the county in which any such city is situated, and for the purpose of founding, establishing and maintaining free public libraries for the use and benefit of the inhabitants of any such city or of the county in which any such city is situated. ('15 c. 183 § 1)

[1623—]2. **Same—Power to administer, etc.**—Any such city is hereby authorized and empowered to administer any gift, devise or bequest to it in trust for the purposes aforesaid, by such officials, officers or trustees as the donor or testator may designate for that purpose in the will or instrument creating the trust, and in accordance with the terms of such will or instrument, and any officers or officials of any such city or of any county in which any such city is situated, as may be designated to administer any such trust by any will or other instrument creating the trust in any such municipality for either or both of the purposes aforesaid, are hereby empowered to administer, and are hereby charged with the duty of administering, such trust in accordance with the terms of the will or instrument creating the same. ('15 c. 183 § 2)

[1623—]3. **Same—Application to what cities—**This act shall apply to cities having a population of over fifty thousand inhabitants now or hereafter operating under a home rule charter adopted pursuant to Section 36, Article 4, of the Constitution of the State of Minnesota. ('15 c. 183 § 3)

1625. Power to maintain auditorium building—Auditorium board—

Where an auditorium in a building erected for municipal purposes is no longer needed for public use and its lease will lighten taxation, the municipality may lease it for private use (162+1073). Municipal Corporations, ¶717.

[1626—]1. **Auditorium buildings in cities not under home rule charters—Commission—**In any city of this state having a population of more than 50,000 inhabitants, not operating under a home rule charter, there is hereby created a commission for the purpose of acquiring the necessary land, the erection, operation and management of a building for auditorium purposes and for the purpose of raising and disbursing funds necessary therefor. ('17 c. 340 § 1)

Section 12 repeals inconsistent acts, etc.

[1626—]2. **Same—Commission, how constituted and appointed—**Said commission shall be known as the "board of auditorium commissioners," and shall consist of five persons. The mayor of the city and the president of the city council, or the governing body of the city, shall be ex-officio members thereof. The remaining three members shall be appointed by the mayor from among the freeholders of said city and two of such number shall be men skilled in the operation, construction and handling of large buildings. Such commissioners shall be originally appointed by the mayor for the terms of one, two and three years and thereafter they shall be appointed for terms of three years. ('17 c. 340 § 2)

[1626—]3. **Same—Oath—Officers—**Such commissioners shall, as soon as practicable within ninety days after the passage of this act, meet at the court house in such city and each one of said commissioners shall take an oath before one of the judges of the district court of the county in which said city is located, to support the constitution of the United States and the State of Minnesota and that he will faithfully and honestly perform the duties of said office as one of said commissioners and that he will not knowingly permit any fraud, dishonest practice or cheating by any contractor or other person doing work or performing labor for said commission in or about the purchase or condemnation of said site, or the erection, operation or furnishing of said auditorium contemplated by this act, nor will he knowingly permit any such fraud, dishonest practice or cheating by any person or persons whomsoever.

Said commissioners shall elect one of their number to act as president of the board and one of their number to act as vice-president of said board, each of whom shall hold his respective office until the first Tuesday after the first Monday of January in the year following his election, unless sooner removed by said board and until his successor shall have been elected and shall have entered on the duties of his office; and on every first Tuesday after the first Monday of January thereafter a like election of president and vice-president shall take place, who shall hold their respective offices, unless sooner removed by said board, until their successors are elected and enter upon their duties. The said clerk of said city shall serve as secretary and the city treasurer as treasurer of said board and said board may appoint such employes and agents, to be paid such compensation as it may designate and as to it may seem best. ('17 c. 340 § 3)

[1626—]4. **Same—Acquisition of property—Appraisers—Notice—Hearing—Damages—Report, etc.—**The said board shall have the power to acquire such land as is necessary for a site of said auditorium by purchase or by lease and whenever it is unable to make satisfactory arrangements for the purchase of the property necessary for such site, it shall have the authority and it is hereby authorized to appoint three disinterested citizens of said city, who shall be freeholders therein, as appraisers to appraise the damages to the owner or owners of incumbrances, or to any person having a lien on or any interest in any part of the property to be acquired; such appraisers shall, after be-

ing sworn to faithfully and impartially discharge their duties, give notice as soon as practicable of the time when and the place where they will meet to attend to the business of their appointment which said notice shall be published at least ten days in two daily newspapers published in said city and at the time and place specified in such notice they shall proceed to hear all persons interested in the subject of appraisalment, at which time they shall also view the premises. They may hear any evidence offered by any parties interested and may adjourn from day to day for the purpose aforesaid. They shall also hear the owner or owners and also any person having any interest in or lien upon any part of said property; when their view and hearing shall be concluded they shall determine the amount of damages to be paid by the owner or owners and to each person who may have any interest in or lien upon any part of said premises. If there should be any building standing in whole or in part upon any part of said land to be taken, said appraisers shall in such case, determine the amount of damages which should be paid to the owner or owners thereof, and shall also appraise and determine the amount of damages to be paid such owner or owners in case he or they should elect to remove said building and the damage in relation to the building aforesaid shall be appraised separately from the damages in relation to the land upon which the same is erected. If the lands and buildings belong to different persons, or if the land be subject to a lease, mortgage or judgment, or if there be any estate less than the estate in fee, the injury or damage done such persons so interested respectively may be awarded to them by the appraisers: provided that neither such award made by the appraisers nor the confirmation thereof by the board herein created shall be deemed to require payment of such damages to the person or persons named in said award in case it shall transpire that such person or persons are not entitled to receive the same. The said appraisers, having ascertained and appraised the damages aforesaid, shall make and file with the city clerk, as secretary of the board, a written report of said board, of their action in the premises, which report shall contain a schedule of the appraisalment of damages made to each person, with a description of the lands and names of the owners, if known to them, and of the interest therein of each person to whom they award damages and also a statement of the costs of the proceeding. Upon filing the said report the secretary of the board hereby created shall give notice in two daily newspapers printed and published in said city by publication therein of ten days to the effect that said appraisalment has been returned and filed with said city clerk, as secretary of said board and that the same will be confirmed by the board herein created at a meeting thereof to be named in said notice, unless objections are made in writing by persons interested in any land required to be taken. ('17 c. 340 § 4)

[1626—]5. Same—Removal of buildings—Confirmation, revision, etc., of assessment—Reappraisalment—Payment of Damages, etc.—Any person interested in any building or buildings standing in whole or in part upon any land required to be so taken shall, on or before the time specified in such notice, for such confirmation notify said city clerk, as secretary of said board, in writing of their election to remove such building. The board hereby created, upon the day fixed for the consideration of such report, or at such subsequent meeting to which the same may stand over, or be referred, shall have power in their discretion to confirm, raise, revise or annul the appraisalment giving due consideration to any objections interposed by parties interested and if so annulled said board may appoint other appraisers in like manner, as the first appraisers, to act in the same manner to re-appraise the same. The damages appraised shall be paid by said board and shall be so paid or tendered or be deposited with the clerk of the district court of said county as hereinafter provided, within three (3) months after the confirmation of such appraisalment and report; but in case any appeal or appeals shall be taken from the order confirming such appointment, then the amount of such damages shall not in any case be required to be paid or tendered or deposited with said clerk of the district court as aforesaid, until thirty (30) days after the determination of all appeals which shall have been so taken. The land and property re-

quired to be taken for the purposes aforesaid, shall not be taken possession of until the damages awarded to the owner thereof, or other person entitled thereto, shall have been paid or tendered to such owner or deposited with the clerk of said court, as hereinafter provided and in case said board shall be unable to find the owner or other person to whom such damages are due, in order to pay or tender the same, or in case said board shall be unable to determine to whom the damages so awarded should in any particular case be paid, or in case of disputed claims in relation thereto, the amount of damages in any such case may be deposited by order of said board in the district court of the county in which said city is located; the said court, upon proper application of any person claiming the award or any part thereof, shall determine to whom the same shall be paid.

In case any owner or owners of buildings as aforesaid shall have elected in manner aforesaid to remove his or their buildings, he or they shall so remove them within thirty (30) days from the confirmation of said report, or within such further time as the board may allow for the purpose and shall thenceforth be entitled to payment of the amount of damages awarded in such case. In case of removal, when such person or persons shall not have elected to remove such buildings, or shall have neglected (after having elected) to remove the same within the time prescribed, such buildings, or so much thereof as may be necessary upon payment or depositing the damages awarded for such taking, in a manner aforesaid, may be taken and appropriated, sold or disposed of as the said board shall direct and the same or the proceeds thereof shall belong to the fund hereinafter named.

When any known owner of lands or tenements affected by any proceeding within this act, shall be an infant or shall labor under any legal disability, a judge of the district court of the county in which said city is located may, upon application of one of said commissioners, or of said board, or if such party by his next friend, appoint a suitable guardian for such party and all notices required by this act shall be served upon such guardian. ('17 c. 340 § 5)

[1626—]6. **Same—Appeals, etc.**—Any person whose property is proposed to be taken or interfered with, under any provisions of this act and who deems that there is any irregularity in the proceedings of the said board or action of the appraisers, by reason of which the award of the appraisers ought not to be confirmed, or who is dissatisfied with the amount of damages awarded to him for the taking of or interference with his property, may at any time before such award shall be confirmed by the board of commissioners, file with the secretary of said board in writing, his objection to such confirmation, setting forth therein specifically the particular irregularities complained of and containing a description of the property affected by such proceedings, and if, notwithstanding such objections, the said board shall confirm the award, such person so objecting shall have the right to appeal from such order of confirmation of the board, to the district court of the county in which said city is located, at any time within twenty (20) days after such order; such appeal shall be made by serving a written notice of such appeal upon the said city clerk as secretary of said board, which shall specify the property of the appellant affected by such award and refer to the objection filed as aforesaid and also by delivering to said city clerk, as secretary of said board, a bond to the said board, executed by the appellant, or by someone on his behalf, with two (2) sureties who shall justify in the penal sum of fifty (\$50.00) dollars, conditioned to pay all costs that may be awarded against the appellant. Thereupon the said city clerk, as secretary of said board, shall make out and transmit to the clerk of the said district court a copy of the award of said commissioners, as confirmed by said board and of the order of the board, confirming the same and of the objection filed by the appellant as aforesaid, all certified by said city clerk, as secretary of said board, to be true copies, within ten (10) days after the taking of such appeal. But if more than one appeal be taken from any award, it shall not be necessary that the city clerk, as secretary of said board shall send up anything except a certified copy of the appellant's objection. There shall be no pleading on such appeal, but the

court shall determine in the first instance whether there was in the proceeding any such irregularity or omission of duty prejudicial to the appellant and specified in said written objections, that as to him the award or appraisement of the appraisers ought not to stand and whether said appraisers had jurisdiction to take action in the premises. The case on such irregularities may be brought on for hearing on eight (8) days notice, at any general or special term of the court and shall have precedence of other civil cases and the judgment of the court shall be either to confirm or annul the proceedings only as the same affects the property of the appellant proposed to be taken or damaged and described in said written objection. From such determination no appeal or writ of error shall lie. In case the amount of damages awarded is complained of by such appellant, the court shall, if the proceedings shall be confirmed in other respects, upon such confirmation, submit the question of damages sustained by appellant to a jury, at a general term of said court and said jury shall find the value of the real estate of the appellant as well as of the buildings thereon, separately, or of the value of the real estate and the buildings thereon together, as the court may direct, in accordance with the facts in the case, whether or not the appellant has elected to retain the buildings, as hereinbefore provided. Upon said verdict, unless set aside by the court as in the case of other verdicts of juries on the motion for a new trial by appellant or by said board, the court shall enter judgment as in any other civil case from which judgment or from any other order of the court, whether the same be from an order granting or refusing a new trial or otherwise, there shall be no appeal or writ of error. ('17 c. 340 § 6)

[1626—]7. **Same—Proceedings of board for acquiring site to be filed with the register of deeds**—As soon as said proceedings for acquiring the title to such lands shall have been completed said board shall make an accurate description of each parcel of land so condemned, together with the names of the owners thereof and any incumbrancer thereof or other person having any lien or interest therein, with a statement of the amount of damages awarded therefor, either by said appraisers or by the court or jury, together with a copy of the receipt of such owner, incumbrancer, or other person having a lien upon or interest therein, or in case the same has been paid to the clerk of said court and has not been received by such owner, incumbrancer or other person having a lien upon or interest in said land, then a copy of the receipt of said clerk of the court therefor, all of which shall be certified to by the president and city clerk, as secretary of said board, under the official seal of said board and be filed for record in the office of the register of deeds in said county in which said city is located, which said register of deeds shall record the same in his office in the usual way of recording transfers of real estate in said county and when so recorded the same shall be prima facie evidence of title to such parcel of land and of the transfer of all the interests of such former owner, incumbrancer or other person having any lien upon or interest in said parcel of real estate to said board of auditorium commissioners. ('17 c. 340 § 7)

[1626—]8. **Same—Bonds**—For the purpose of providing money for acquiring title to or release of the land necessary for such auditorium and for the construction of said auditorium building, said board of auditorium commissioners is hereby authorized to issue bonds to run not to exceed thirty (30) years, bearing interest payable semi-annually, not to exceed four and one-half ($4\frac{1}{2}$) per cent per year, in such amount as may be required for such purpose, from time to time, but not to exceed in all the sum of eight hundred thousand (\$800,000.00) dollars, which bonds shall be denominated "auditorium bonds" and which are hereby made a lien upon the said property acquired and any such building constructed by said commissioners. Said bonds shall be issued under the seal of said board and shall be signed by the president and city clerk as secretary thereof. ('17 c. 340 § 8)

[1626—]9. **Same—Payment of bonds—Tax levy**—The said city is hereby charged with the payment of the principal and interest of all bonds so issued by this board. It is hereby made the duty of the city council of said city to raise by levy on all taxable property within said city sufficient money each year to pay the interest on said bonds and the said city council shall also raise

by a like tax a sum of money equal to not to exceed two (2) per cent of the principal of said bonds, to be invested and held as a sinking fund for the payment of the principal of said bonds, which shall be invested in like manner as the sinking funds provided for the payment of other bonds of said city. '17 c. 340 § 9)

[1626—]10. **Same—Meetings of board—Moneys from use of building, how disposed of—Annual report**—Said board shall hold stated meetings as often as once in each month and shall keep a record of its proceedings. The members of said board shall serve without compensation. All moneys derived from the use of said building shall be daily turned into the city treasury and shall be credited to the fund to be known as the auditorium fund and the expense of maintaining said building and the operation thereof shall be paid from said fund and any and all moneys which may accrue from said building in excess of the cost of maintenance and operation shall be set apart and be preserved for the payment of interest upon any bonds or indebtedness which may be issued or incurred in the construction of said building and as a sinking fund for the redemption of such bonds or indebtedness. Said board shall in the month of January in each year make and file with the city clerk of said city a full and detailed report of its proceedings including all receipts and expenditures and the sources thereof for the preceding year. ('17 c. 340 § 10)

[1626—]11. **Same—Contracts how let**—The contract for the construction of said auditorium and for all equipment and supplies exceeding in cost the sum of one thousand (\$1,000.00) dollars, shall be let to the lowest bidder therefor, after reasonable notice thereof shall have been given by said board. ('17 c. 340 § 11)

[1639—]1. **Franchises for street railways in cities not under home rule charters—Term—Conditions, etc.**—The council of any city now or hereafter having a population of more than fifty thousand inhabitants, not operating under Section 36, Article 4 of the Constitution of this State, is hereby authorized, unrestricted by any provision of statute or charter, to grant a franchise for the construction, extension, maintenance and operation of street railways in and upon the streets, highways and public grounds within the city, and within any park or parkway heretofore or hereafter acquired by the city within or without the corporate boundaries. But no street railway shall be laid in any park or parkway without the consent of the board of park commissioners or other body charged with the care and maintenance of the park or parkway. No franchise shall be granted under this act except to a corporation organized under the laws of this state and having power to construct, maintain and operate street railways for the common carriage of passengers, nor shall the same, or any interest in the same, ever, for purposes of operation, be assigned or transferred to or owned by any person or corporation except a corporation organized under the laws of this state having the powers aforesaid. And in case of any assignment or transfer to, or ownership by, any such domestic corporation, all privileges and immunities contained in such franchise, as well as all obligations imposed thereby, shall pass to and be enjoyed by and be binding upon such assignee, transferee or owner. The city shall reserve the right to authorize any existing or future suburban railway company the joint use of tracks, poles, wires, appliances, power and electric current, of any company to which a franchise is granted under this act, and the franchise shall contain provisions for determining the compensation to be paid for such joint use. This act shall not be construed to authorize the extension of any existing contract or franchise.

Any such franchise shall not be granted hereunder for more than thirty (30) years in the first instance, and shall contain an option on the part of any such city to purchase the entire street railway property at the end of each five (5) or ten (10) year period of such term and at the expiration of such term of the franchise, and thereafter at the expiration of any five year period, upon giving one (1) year's written notice to the owners of said railway of the city's intention to purchase said street railway property. The franchise may provide that upon failure of any such city to condemn or ex-

ercise such option to purchase at or before the expiration of the franchise said franchise shall without further act continue until terminated by purchase or condemnation of the property, but not exceeding thirty (30) years or such lesser period as the franchise may fix. The term of any such franchise may begin at the expiration of a now existing franchise, and the new franchise may, in the discretion of the council, be granted to the holder of an old or existing franchise; provided such holder is a Minnesota corporation having the powers aforesaid. The reservation of any such option to purchase on the part of any such city shall not prevent resort to eminent domain. The franchise shall terminate at time of purchase or condemnation of the entire plant and properties.

The term "council" as used in this act, shall include the chief governing body of the city by whatever name known. The word "may" shall nowhere in this act be construed as "shall." ('15 c. 124 § 1)

[1639—]2. **Same—Fixing fares—Extension—Power of regulation—**The franchise may embrace an agreement fixing fares and shall provide for compensation to the city in the form of a division of surplus earnings, amortization or otherwise. The council shall have power to regulate reasonably construction and operation and may, from time to time require reasonable improvements and service. The council shall have power to fix in said franchise, the terms and conditions upon which it may require extension. Any agreement fixing fares shall not exceed the period of thirty (30) years. Any agreement fixing fares may provide for different fares at different times or under varying circumstances. In the absence of an agreement fixing fares and upon the expiration of any agreement fixing fares, the council shall have power to fix a reasonable fare. The power of regulation herein granted shall not be contracted away. The power of regulation may be exercised by ordinance, with penalty by fine and imprisonment in case of violation and regulations may be enforced by mandamus, injunction or other appropriate civil action. ('15 c. 124 § 2)

[1639—]3. **Same—Basis for purchase—Valuation—**For the purpose of fixing a basis for the purchase price of the property and for a division of surplus earnings, a physical valuation of the property shall, in case of a grant to a company already having a street railway property, be made either before the granting of the franchise and incorporated therein, or at the beginning of the term of the franchise. The valuation may include a fair going concern value but shall not include any franchise or good-will value. The franchise may provide for increasing such valuation by additions and improvements and decreasing it by depreciation, alienation and loss of properties. Additional provisions may be made in the franchise for making the valuation. ('15 c. 124 § 3)

[1639—]4. **Same—Annual report—**The holder of the franchise shall file with the city clerk annual reports by the corporation, from the beginning of the franchise until its termination, of receipts and disbursements, inventories, stock and bond issues, and there shall be an annual inspection by the city of all property, books, accounts, records, checks, vouchers, contracts and documents of the corporation, and such further inspection thereof by the city as the franchise may provide. ('15 c. 124 § 4)

[1639—]5. **Same—Disposition of shares, certificates, etc.—**The holder of the franchise shall not sell, dispose of or pledge any shares of its capital stock, or issue any certificates therefor, for less than ninety-five per cent (95%) of their par value nor until such shares shall have been paid for in money, nor issue any bonds, except for money to the market value of the bonds, not, however, less than ninety per cent (90%) of the par value thereof. The proceeds of all stocks and bonds shall be devoted to the lawful purposes of the holder under such franchise. ('15 c. 124 § 5)

[1639—]6. **Same—Power, how exercised—Ordinance—Acceptance—**The power to grant a franchise under this act shall be exercised only by ordinance adopted by a majority of all the members of the council at a regular meeting, and the ayes and nays shall be entered in the minutes. The vote on the

final passage of the ordinance shall not be taken until the expiration of at least fourteen (14) days after the publication of the proposed ordinance in its final form in the official newspaper of the city. The corporation shall have such time as may be fixed by the ordinance, not less than thirty (30) days after final passage and publication, in which to accept. Acceptance shall be first authorized by the board of directors of the corporation and a copy of the resolution authorizing such acceptance shall be filed with the acceptance in the office of the city clerk. The grant shall be fully effective when made and accepted as aforesaid, and ratified as provided in the next section. ('15 c. 124 § 6)

[1639—]7. **Same—Ratification by voters**—No such franchise shall be effective until it shall have been ratified by a majority of the votes of the electors of the city cast upon the question at a general or special election not less than ninety (90) days after the filing of the acceptance of the franchise. The franchise shall provide for such submission. ('15 c. 124 § 7)

[1639—]8. **Same—Bonds for valuation—Tax levy, etc.**—For the purpose of raising funds for making the valuation provided for in Section 3 [1639—3], the council is hereby authorized to issue and sell bonds of the city to an amount not exceeding fifty thousand (\$50,000) dollars in par value. Said bonds shall be issued only in pursuance of a resolution adopted by the affirmative vote of a majority of all the members of a city council or other governing body of such city. The faith and credit of the city shall be pledged to the payment of said bonds and the interest thereon. The council or governing body aforesaid shall include in the tax levy of each year an amount sufficient to pay the current interest on such bonds, and the sinking fund of the city shall be pledged to their redemption at maturity.

Bonds issued under this act shall not run for a term longer than thirty years or bear a rate of interest higher than four per cent per annum, payable semi-annually. The place of payment of principal and interest, and the denominations of said bonds, shall be fixed by the resolution authorizing their issue, and all or any of them may be in the form of coupon bonds or of registered certificates, so-called as the purchaser may prefer.

All bonds or certificates so issued shall be signed by the mayor, attested by the city clerk, and countersigned by the city comptroller of such city, and be sealed with the city seal, except that the signatures to the coupons attached thereto, if any, may be lithographed. None of such obligations shall be sold at less than ninety-five per cent (95%) of their par value and accrued interest, or to any but the highest responsible bidder therefor. ('15 c. 124 § 8)

[1639—]9. **Contracts with street railway companies for transporting property, etc., in cities not under home rule charters**—Every city of this state now or hereafter having over fifty thousand inhabitants and not governed under a charter adopted pursuant to Section 36, Article 4 of the state constitution, in addition to all the powers now possessed by such city, is hereby authorized and empowered, acting by and through its city council or common council, to provide for and enter into and make contracts with any street railway company operating street railway lines in the city for the carriage and transportation over the street railway lines of such company in the city of any property or materials of any kind or description belonging to the city, including any and all kinds of garbage, rubbish, ashes and other refuse materials, and any materials to be used exclusively by said city, which the city shall desire to have transported, carried or removed in, through or from the city, and any such street railway company is hereby authorized and empowered to enter into, make and perform any such contract with the city, as hereinbefore provided, for such reasonable compensation therefor as may be agreed upon. Provided, that no such contract or contracts shall be made for a longer period of time than the time of duration of any franchise or right to use the streets of such city of any such company. ('15 c. 255 § 1)

[1639—]10. **Restricted residence districts in cities under home rule charters**—Any city of the first class may, through its council, upon petition of fifty (50) per cent of the owners of the real estate in the district sought to

be affected, designate and establish by proceedings hereunder restricted residence districts within its limits wherein no building or other structure shall thereafter be erected, altered or repaired for any of the following purposes, to-wit, hotels, restaurants, eating houses, mercantile business, stores, factories, warehouses, printing establishments, tailor shops, coal yards, ice houses, blacksmith shops, repair shops, paint shops, bakeries, dyeing, cleaning and laundering establishments, bill-boards and other advertising devices, public garages, public stables, apartment houses, tenement houses, flat buildings, any other building or structure for purposes similar to the foregoing. Public garages and public stables shall include those, and only those, operated for gain.

Nothing herein contained shall be construed to exclude double residences or duplex houses, so-called, schools, churches, or signs advertising for rent or sale the property only on which they are placed.

No building or structure erected after the creation of such district shall be used for any purpose for which its erection shall be prohibited hereunder.

The term "council" in this act shall mean the chief governing body of the city by whatever name called. ('15 c. 128 § 1)

[1639—]11. **Same—Designation of district—Eminent domain**—The council shall first designate the restricted residence district, and shall have power to acquire by eminent domain the right to exercise the powers granted by this act by proceedings hereinafter defined, and when such proceedings shall have been completed the right to exercise such powers shall be vested in the city. ('15 c. 128 § 2)

[1639—]12. **Same—Appointment of appraisers, etc.—Notice—View and hearing—Damages and benefits—Report—Notice of appraisement—Duties of council—Assessments and awards—Appeals**—The council shall appoint five appraisers who shall be disinterested qualified voters of the city, and none of whom shall be a resident of the ward or wards in which any part of the district so designated is situate, to view the premises and appraise the damages which may be occasioned by the establishment of such restricted residence district and by the exercise by the city of the powers herein granted.

Said appraisers shall be notified as soon as practicable by the city clerk, as the case may be, to attend at a time fixed by him, for the purpose of qualifying and entering upon their duties. Whenever a vacancy may occur among said appraisers by neglect or refusal of any of them to act or otherwise, such vacancy shall be filled by the council.

Second. The appraisers shall be sworn to discharge their duty as appraisers in the matter with impartiality and fidelity; and to make due return of their acts to the council.

Third. The appraisers shall give notice, by publication in the official newspaper of the city, once a week for two consecutive weeks, which last publication shall be at least ten days before the day of such meeting, which notice shall contain a general description of the lands designated by the council, and give notice that a plat of the same has been filed in the office of the city clerk, and that said appraisers will meet at a place and time designated in the notice, and thence proceed to view the premises and appraise the damages which may be occasioned by the establishment of such restricted residence district and by the exercise by the city of the powers herein granted, and to assess benefits in the manner hereinafter specified.

Fourth. The city clerk shall, after the first publication of such notice, and at least six days (Sundays excluded) prior to the meeting specified in said notice, serve upon each person in whose name each tract or parcel of said land is then assessed, a copy of said notice by depositing the same in the postoffice of said city, with postage prepaid, directed to such person at his place of residence, if known to the city clerk, but if not known, then to his place of residence as given in the last published city directory of said city, if his name appears therein.

After the first publication of said notice, and at least six days (Sundays excluded) prior to the meeting specified in said notice, a copy of the same

shall also be served upon the person in possession of each of said tracts or parcels of land, or some part thereof, if the same be actually occupied, in the same manner as provided for the service of summons in a civil action in the district court. A copy of all subsequent notices relating to said proceedings which are required to be published, shall be mailed by said clerk in the manner above specified, immediately after the first publication thereof, to such persons as shall have appeared in said proceedings and requested in writing that such notice be mailed to them.

Fifth. At the time and place mentioned in the notice, the said appraisers shall meet and thence proceed to view the premises, and may hear the evidence or proof offered by the parties interested, and may adjourn from time to time for the purposes aforesaid. When their view and hearing shall be concluded they shall determine the amount of damages, if any, suffered by each piece or parcel of land of which each piece or parcel of land in the district is a part. They shall also determine the amount of benefits, if any, to each such piece or parcel of land. If the damages exceed the benefits to any particular piece, the excess shall be awarded as damages. If the benefits exceed the damages to any particular piece, the difference shall be assessed as benefits, but the total assessment for benefits shall not be greater than the aggregate net award of damages; and in every case the benefits assessed upon the several parcels shall be in proportion to the actual benefits received, and no assessment upon any particular piece shall exceed the amount of actual benefits after deducting the damages, if any.

Sixth. If the land and buildings belong to different persons, or if the land be subject to lease, mortgage or judgment, or if there be any estate less than an estate in fee, the injury or damage done to such persons or interests respectively may be awarded to them separately by the appraisers. Provided, that neither such award of the appraisers, nor the confirmation thereof by the council shall be deemed to require the payment of such damages to the person or persons named in such award in case it shall transpire that such person or persons are not entitled to receive the same.

Seventh. The said appraisers having ascertained and appraised the damages and benefits as aforesaid, shall make and file with the city clerk a written report of their action in the premises, embracing a schedule and appraisal of the damages awarded and benefits assessed, with descriptions of the lands, and the names of the owners, if known to them and also a statement of the costs of the proceedings.

Eighth. Upon such report being filed, the city clerk shall give notice that such appraisal has been returned, and that the same will be considered by the council at a meeting thereof to be named in the notice, which notice shall be published in the official newspaper of said city, once a week for two consecutive weeks, and the last publication shall be at least 10 days before such meeting. The council upon the day fixed for the consideration of such report, or at any subsequent meeting to which the same may stand over or be referred, shall have power in their discretion to confirm, revise or annul the appraisal and assessment, giving due consideration to any objections interposed by parties interested in the manner hereinafter specified, provided that said council shall not have the power to reduce the amount of any award, nor increase any assessment. In case the appraisal and assessment is annulled, the council may thereupon appoint new appraisers, who shall proceed, in like manner, as in case of the first appraisal, and upon the coming in of their report, the council shall proceed in a like manner and with the same powers as in the case of the first appraisal.

Ninth. If not annulled or set aside, such awards shall be final, and shall be a charge upon the city, for the payment of which the credit of the city shall be pledged. Such assessments shall be and remain a lien and charge upon the respective lands until paid. The awards shall be paid to the persons entitled thereto, or shall be deposited and set apart in the treasury of the city for the use of the parties entitled thereto, within six months after the confirmation of the appraisal and award. But in case any appeal or appeals

shall be taken from the order confirming said appraisement and assessment, as hereinafter provided, then the time for payment of said awards shall be extended until and including sixty days after the final determination of all appeals taken in the proceeding, and in case of any change in the awards or assessments upon appeal, the council may, by resolution duly adopted, at any time within sixty days after the determination of all appeals, set aside the entire proceeding. Any awards so set aside shall not be paid, and the proceedings as to the tracts for which the awards are so set aside shall be deemed abandoned. Any awards not so set aside shall be a charge upon the city, for the payment of which the credit of the city shall be pledged. All awards shall bear interest at the rate of six per cent per annum from the time of the filing of the original appraisers' report and all subsequent awards and awards upon appeal shall be made as of the day and date of filing of such original reports.

Tenth. Upon the conclusion of the proceedings and the payment of the awards, the several tracts of lands shall be deemed to be taken and appropriated for the purpose of this act, and the right above specified shall vest absolutely in the city in which the lands are situate. In case the council shall in any case be unable to determine to whom the damages should in any particular case be paid, or in case of adverse claim in relation thereto, or in case of the legal disability of any person interested, the council shall, and in any and every case, the council may in its discretion deposit the amount of damages with the district court of the county in which such lands are situate, for the use of the parties entitled thereto, and the court shall, upon the application of any person interested and upon such notice as the court shall prescribe, determine who is entitled to the award, and shall order the same paid accordingly. Any such deposit shall have the same effect as the payment to the proper persons.

Eleventh. Any owner of land within said district who deems that there is any irregularity in the proceedings of said council, or action of the appraisers, by reason of which the award of the appraisers ought not to be confirmed, or who is dissatisfied with the amount of damages awarded, to him or the assessment thereon, may at any time before the time specified for the consideration of the award and assessment by the council, file with the city clerk, in writing, his objections to such confirmation, setting forth therein specifically the particular irregularities complained of, and the particular objection to the award or assessment, and containing a description of the property in which he is interested, affected by such proceedings and his interest therein, and if, notwithstanding such objections the said council shall confirm the award, or assessment, such person so objecting shall have the right to appeal from such order of confirmation of the council to the district court of the county where such land is situate, within twenty days after such order. Such appeals shall be made by serving a written notice of appeal upon the city clerk which shall specify the property of the appellant affected by such award and refer to the objection filed as aforesaid, thereupon said city clerk, at the expense of the appellant, shall make out and transmit to the clerk of the district court a copy of the record of the entire proceedings, and of the award of the appraisers as confirmed by the council and of the order of the council confirming the same, and of the objections filed by the appellant, as aforesaid, and of the notice of appeal, all certified by said city clerk to be true copies, within ten days after the taking of such appeal. But if more than one appeal be taken from any award, it shall not be necessary that the city clerk in appeals subsequent to the first, shall send up anything but a certified copy of the appellant's objections. There shall be no pleading on any appeal, but the court shall determine in the first instance whether there was in the proceedings any such irregularity or omission of duty prejudicial to the appellant and specified in his written objection that as to him the award or assessment of the appraisers ought not to stand, and whether said appraisers had jurisdiction to take action in the premises.

Twelfth. The case may be brought on for hearing on eight days' notice, at any general or special term of the court, and the judgment of the court

shall be to confirm or annul the proceedings, only so far as the said proceedings affect the property of the appellant proposed to be included in said district or damaged or assessed, and described in said written objection. In case the amount of damages or benefits assessed is complained of by such appellant, the court shall, if the proceedings be confirmed in other respects, appoint three disinterested qualified voters, appraisers to reappraise said damages, and reassess benefits as to the property of appellant. The parties to such appeal shall be heard by said court upon the appointment of such appraisers, and the court shall fix the time and place of meeting of such appraisers, they shall be sworn to the faithful discharge of their duties as such appraisers, and shall proceed to view the premises and to hear the parties interested, with their allegations and proofs pertinent to the question of the amount of damages or benefits; such appraisers shall be governed by the same provisions in respect to the method of arriving at the amount of damages or benefits and in all other material respects as are in this chapter made for the government of appraisers appointed by said council. They shall, after the hearing and view of the premises, make a report to said court of their award of damages and assessment of benefits in respect to the property of such appellant. The award shall be final unless set aside by the court. The motion to set aside shall be made within fifteen days. In case such report is set aside, the court may, in its discretion, recommit the same to the same appraisers, or appoint new appraisers as it shall deem best; said court shall allow to said appraisers a reasonable compensation for their services, and make such award of costs on such appeal, including the compensation of such appraisers as it shall deem just in the premises, and enforce the same by execution. In case the court shall be of the opinion that such appeal was frivolous or vexatious, it may adjudge double costs against such appellant. An appeal may be taken to the supreme court of the state from any final decision of the district court in said proceedings. ('15 c. 128 § 3)

[1639—]13. Same—Maps, plats and lists—Duties of officers—Assessments—As soon as such condemnation proceedings have been completed, it shall be the duty of such council to cause maps or plats of such restricted residence district to be made, with a list of the parcels of land within such district, and to file one of such maps and list duly certified by the president of the council and the city clerk, in each of the following offices, to-wit, the office of the city engineer, the office of the register of deeds of the county and the office of the city clerk, and the same shall be prima facie evidence of the full and complete condemnation and establishment of said restricted residence district. As soon as the assessments are confirmed, the city clerk, or the clerk of the district court, as the case may be, shall transmit a copy thereof duly certified, to the county auditor of the county in which the lands lie. The county auditor shall include the same in the next general tax list for the collection of state, county and city taxes, against the several tracts or parcels of land, and said assessments shall be collected with and as a part of, and shall be subject to the same penalties, costs and interest, as the general taxes. Such assessments shall be set down in the tax books in an appropriate column to be headed "Restricted Residence District Assessments," and when collected a separate account thereof shall be kept by the county auditor, and the same shall be transmitted to the treasurer of the city, and placed to the credit of the proper fund. ('15 c. 128 § 4)

[1639—]14. Same—Ordinances—The council shall have the power to enact ordinances for the enforcement of the rights which shall be acquired under this act, and to fix penalties for their violation, including a fine not exceeding one hundred dollars (\$100) or confinement in the city workhouse not exceeding ninety (90) days. Violations of the ordinances may be prosecuted in the municipal court of the city. ('15 c. 128 § 5)

[1639—]15. Same—Buildings when nuisances—Any building or structure erected, altered, repaired or used in violation of this act or any ordinance passed under it, shall be deemed a nuisance and may be abated at the suit of the city in a civil action. The city may maintain actions for injunction to

prevent violation of the act and of the ordinances passed in pursuance hereof. Owners of land and others interested in land within the district may also maintain similar actions of abatement and for injunction. ('15 c. 128 § 6)

[1639—]16. **Same—Application to what cities**—This act shall also apply to cities existing under a charter framed pursuant to Section 36, Article IV of the Constitution of the State of Minnesota. ('15 c. 128 § 7)

[1639—]17. **Municipal forests in cities under home rule charters—Annual tax**—Any city in the State of Minnesota, now or hereafter having a population of more than fifty thousand inhabitants, by resolution of the governing body thereof, may accept donations of land as such governing body may deem to be better adapted for the production of timber and wood than for any other purpose, for a forest, and may manage the same on forestry principles. The donor of not less than one hundred acres of any such land shall be entitled to have the same perpetually bear his or her name. The governing body of any such city, when funds are available or have been levied therefor, may purchase or obtain by condemnation proceedings, and preferably at the sources of streams, any tract of land for a forest which is better adapted for the production of timber and wood than for any other purpose, which is conveniently located for the purpose, and manage the same on forestry principles. The selection of such lands, and the plans of management thereof, shall have the approval of the state forester. Such city is authorized to levy and collect an annual tax of not exceeding five mills on the dollar of its assessed real estate valuation, in addition to all other taxes authorized or permitted by law, to procure and maintain such forests. ('15 c. 217 § 1)

[1639—]18. **Same—Application to what cities**—This act shall apply only to such cities as are or may be governed by a charter adopted pursuant to Section 36 Article 4 of the Constitution of this state. ('15 c. 217 § 2)

[1639—]19. **Transfer of funds of city, departments or boards in cities not under home rule charters**—Whenever in any city of this state having over 50,000 inhabitants and not governed under a home-rule charter adopted pursuant to section 38, article 4 of the state constitution, such city or any department or board of such city shall furnish or deliver to any department or board of such city, any water, gas, heat, light, power, goods, wares, merchandise, supplies or any service whatever, the city council of such city is hereby authorized and empowered to transfer and cause to be transferred and paid into the city treasury, by warrant or otherwise as it may deem best, from any available funds appropriated to the use of such department or board to whom any such water, gas, heat, light, power, goods, wares, merchandise or service is furnished, to the credit of the proper funds of the city, or of the department or board, furnishing the same, the amount of the agreed price or reasonable value of such water, gas, heat, light, power, goods, wares, merchandise or service so furnished and delivered. ('17 c. 105 § 1)

[1639—]20. **Refunding moneys advanced for water mains or other public improvements in cities not under home rule charters**—The city council, common council or other chief governing body of any city of this state of the first class not governed by a home-rule charter is hereby authorized and empowered to refund moneys heretofore advanced by any person for the construction of water mains or other public improvements in the public streets of said city in cases where such water mains or other public improvements were after the advancement of said moneys, actually constructed in such public streets of such cities, but which improvements were not ordered or the assessment therefor against abutting property was not made or levied respectively in accordance with the charter or other governing act of said city, and where it appears that such public improvement is available and can be connected with abutting property and has already been connected with and used by the city for public municipal purposes. Such refundment shall only be made upon verified proofs of such advancement presented to the city council, common council or other chief governing body of such cities, showing that

such advancement of moneys has been heretofore made and that such cities have had and retained said moneys. ('17 c. 189 § 1)

[1639—]21. **Same—Assessments**—The city council, common council or other chief governing body of such cities are hereby authorized and empowered to levy assessments, in like manner as other assessments for local improvements are made in such city, against the abutting property for the cost of the construction of such water main or other public improvement, notwithstanding the provisions of the city charter or other governing act of such cities to the contrary and whether or not there has been an attempted levy of assessments against such abutting property. Provided however that this Act shall not authorize a double assessment against the same property for the same improvement.

The foregoing provisions of this act as to refunding advancements for such public improvements and the right to levy assessments therefor shall not be affected by the lapse of time or the statute of limitations. ('17 c. 189 § 2)

[1639—]22. **Annual tax for current expenses in cities not under home rule charters**—Any city of this state now or hereafter having over fifty thousand inhabitants and not governed under a charter adopted pursuant to section 36, article 4 of the state constitution, is hereby authorized and empowered to levy annually such tax on all the taxable property in the city as it shall deem necessary in addition to the other revenue of the city applicable thereto to defray the current expenses of the city for the next fiscal year, but no such taxes for current expenses of such city shall in any year amount to more than seven mills on each dollar of the assessed valuation of the taxable property in the city. Such levy of taxes shall be made by resolution of the city council or other chief governing body of the city at the same time and in the same manner as other taxes of the city are levied and all taxes levied under this act shall be extended upon the tax lists of the county and collected and enforced in like manner and by the same agencies as other taxes levied by such city are extended, collected and enforced. ('17 c. 341 § 1)

This act appears to supersede 1915 c. 186.

PROVISIONS RELATING TO CITIES OF SECOND CLASS

[1650—]1. **Dense smoke—Abatement—Ordinances**—That the city council or other governing body of each city in this state which now has or hereafter may have 20,000 and not more than 50,000 inhabitants, is hereby authorized and empowered to enact and publish, and to provide penalties for the violation of, ordinances to regulate, control, prohibit and abate the issuance or emission of dense smoke in such city.

For the purposes of this act the population of each city of this state shall be ascertained and determined according to the last census taken under and pursuant to the laws and authority of the State of Minnesota. ('17 c. 8 § 1)

[1650—]2. **Same—Ordinances to define the meaning of dense smoke**—Such ordinances may define the meaning of dense smoke, and declare the issuance or emission thereof to be a public nuisance, and provide all effective steps for the abatement thereof. ('17 c. 8 § 2)

[1650—]3. **Board of fire and police commissioners**—That in each city in the State of Minnesota, which now has or hereafter may have no more than 50,000 and not less than 20,000 inhabitants, there be and hereby is created and established a board of fire and police commissioners which shall have the control and management of the fire and police departments of such city with the powers and duties hereinafter designated.

For the purposes of this act the population of each city of this state shall be ascertained and determined according to the last census taken under and pursuant to the laws and authority of the State of Minnesota. ('15 c. 125 § 1)

Section 20 repeals inconsistent acts, etc.

[1650—]4. **Same—Authority—In whom vested**—That all authority under this act in each such city shall be exercised by a board of five commis-

sioners, to be known and designated as the "Board of Fire and Police Commissioners" who shall be appointed by the mayor of such city, and whose terms of office shall be as hereinafter designated. ('15 c. 125 § 2)

[1650—]5. **Same—Terms of commissioners**—It is hereby made the duty of the mayor of each such city in this state to appoint, within fifteen days after the approval of this act, five persons, residents and tax payers of such city, as such commissioners, one of whom shall be appointed to serve for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years and one for a term of five years. The five persons so appointed shall constitute the first board of fire and police commissioners for the city and each shall hold office until his successor has been appointed and qualified.

The terms of office of each of such commissioners shall commence on the first Monday in May, 1915, and on that day they shall enter upon the performance of their duties and assume the control and management of the fire and police departments of the city in which they have been so appointed. ('15 c. 125 § 3)

[1650—]6. **Same—Mayor annually to appoint one commissioner**—The mayor of each such city shall annually thereafter on the last Monday in March appoint one person, resident and tax payer of such city, as a member of said board and as the successor of the commissioner whose term of office expires in that year, to serve for a term of five years from the first Monday in May of the year in which he is appointed and until his successor is appointed and qualified. ('15 c. 125 § 4)

[1650—]7. **Same—Qualifications of commissioners, etc.—Vacancies—Removal—Oath**—All such appointments shall be subject to the approval of the city council before the same become effective. Provided that all appointments made under the provisions of this act, including the filling of vacancies, shall be so made that not more than one of such commissioners shall be appointed from the same ward in cities having five or more wards, and in cities having less than five wards at least one of such commissioners shall be appointed from each ward.

All vacancies by resignation or otherwise shall be filled by appointment by the mayor, subject to the approval of the city council.

The mayor may remove any of the commissioners for misconduct, incompetency, or neglect of duty, after a reasonable opportunity shall be given him to be heard upon written charges.

Each member of the board before entering upon the discharge of his duties shall take and subscribe the usual oath of office and file the same with the city recorder, together with a written acceptance of his appointment. All appointments made by the mayor shall be in writing and filed with the city recorder. ('15 c. 125 § 5)

[1650—]8. **Same—Annual meeting—President, etc.—Expenses**—The annual meeting of said board shall be held on the first Tuesday in May. At such meeting said board shall elect one of their number to be president of the board and another to be vice-president. Said board may make rules for their government not inconsistent herewith. A majority of the board shall constitute a quorum.

All contracts, engagements, acts and doings of said board within the scope of their authority shall be obligatory and binding upon such city.

The members of said board shall receive no compensation for their services, but shall be allowed their reasonable official expenses, except that traveling expenses outside such city shall not be allowed any such members, unless authority to incur such expenses be granted by such board and approved in writing by the mayor before such expenses are incurred. ('15 c. 125 § 6)

[1650—]9. **Same—City clerk and treasurer to act—Bond—City attorney**—The city recorder or clerk shall act as secretary of the board, shall execute

and file with the board a bond in such penal sum and containing such conditions and with such sureties as the board may prescribe and approve.

The treasurer of each such city is hereby declared to be ex officio treasurer of said board. The city attorney of each such city shall be the legal advisor of said board. ('15 c. 125 § 7)

[1650—]10. **Same—Duties of Secretary—Reports**—It shall be the duty of the secretary under the direction of the board to collect, receive and pay into the city treasury all moneys due said board on account of the operation of said departments. He shall keep a set of books which at all times shall contain a full and complete statement of the condition, operation and expenditures of each such department and of all moneys received and paid out by order of said board in each of such departments, together with an accurate account of all the expenses and liabilities of said board in each such department. The books of said board shall be open at all times to the examination of any tax payer of such city, and to any member or committee of the city council.

On the first day of each month said board shall make a full report in detail to the city council of all moneys received and expended and liabilities incurred by the board. Whenever requested by the city council so to do said board shall transmit to it a concise statement of the financial condition of said departments. ('15 c. 125 § 8)

[1650—]11. **Same—Duties of Treasurer—Fire and police fund**—The city treasurer shall receive all moneys paid into the city treasury on account of said board or appropriated for the use of said board from all sources, and place the same in a separate fund therefor to be designated as the "Fire and Police Fund," which fund is hereby created for each such city. The treasurer shall keep a detailed and exact account thereof in such manner as to show the exact financial condition of the board at all times. ('15 c. 125 § 9)

[1650—]12. **Same—Board to sue and be sued**—Said board may sue or be sued, appear and prosecute to final judgment and defend in any court in the name of the board, any action at law or suit in equity. The board may prosecute an action in the name of the board against any person for the breach of any contract with said board and for injury done or caused to any of the property, real or personal, belonging to the city and used in said fire or police departments, or under the control of said board. ('15 c. 125 § 10)

[1650—]13. **Same—Expenses—Accounts**—Such board shall keep an accurate and detailed record and account of the current expense of operating, maintaining, and improving the fire and police departments of such cities, and such other accounts as may be necessary to show the true financial condition of each of said departments and all property belonging thereto. ('15 c. 125 § 11)

[1650—]14. **Same—Estimates—Duplicates—Duties of recorder—Tax levy**—On or before the second Monday in August each year the secretary of said board shall present to it an estimate of the several amounts required during the next ensuing fiscal year for the operation, maintenance and improvement of each of the departments under its control. The board shall consider the same and make such corrections or changes therein as may be deemed necessary, and shall approve and establish the same on or before the last Monday in August. A duplicate of such estimate, when so approved and established, shall be certified by the president and secretary of the board and transmitted to and filed with the recorder of the city on or before the last Monday in August of each year. The city recorder shall include the amounts so established by said board in his estimate to the city council of the several sums which will be required to meet the expenses of the city during the next ensuing fiscal year. The city council may change or correct such estimates and shall then establish the same in the tax levy for such year. ('15 c. 125 § 12)

[1650—]15. **Transfer of funds**—It shall be the duty of the city treasurer immediately after this act takes effect and such board is organized, to trans-

fer to the fire and police fund created by this act all moneys then in the treasury for the use of the fire and police departments; and to place in said fund all moneys thereafter paid into the city treasury for the use of said departments.

The city council may at any time it may deem it advisable, transfer from the general fund to said fire and police fund any money then in said general fund not otherwise required for the specific purpose for which it was levied. ('15 c. 125 § 13)

[1650—]16. **Same—Payments—Vouchers**—No money shall be paid out of the fire and police fund in the city treasury belonging to said board, unless such payment is authorized by the affirmative vote of a majority of all the members of the board, and then only by order drawn by the secretary of the board, signed by the president, or in his absence the vice-president, and countersigned by the secretary, specifying the purpose, the department for which and the account upon which it is drawn, and made payable to the order of the person in whose favor it is issued. Provided, that orders in the form above prescribed may be issued at the proper times without specific action by the board for the payment of salaries or wages previously fixed and determined by the board and made payable at certain definite times and in certain definite installments. ('15 c. 125 § 14)

[1650—]17. **Same—Appropriations—Loans**—In all appropriations or purchases made and liabilities incurred, the said board shall not exceed in any fiscal year the amount of the estimate made therefor as established by the city council as hereinbefore provided, in addition to such sums as the city council may transfer to said fire and police fund as provided in Section 13 hereof [1650—15], and no loans shall be made by said board for any purpose, except when extraordinary expenditure shall be rendered unavoidable by some unforeseen cause and such expenditure has been approved by the majority vote of the city council of such city. ('15 c. 125 § 15)

[1650—]18. **Same—Contracts—Repairs**—Every contract for the purchase of property to be used in said departments of such cities which shall involve the expenditure of \$200.00 or more, shall be in writing and be filed with the secretary of the board. In making purchases for either of said departments involving an expenditure of more than \$500.00, bids shall be solicited and the purchase made from the lowest responsible bidder, after notice soliciting bids shall have been published in the official newspaper of such city in at least two separate issues thereof, but said board shall have the right to reject any and all bids. Provided, that in case there shall be any sudden or extraordinary injury to any of the property of the city used in either of said departments, and damage or loss may ensue by reason of delay in replacing or repairing such property, said board may cause such damage to be repaired or such property to be replaced without a contract and without letting the same to the lowest bidder, in such manner as the board may deem best for the interest of the city, provided that its action shall be approved by a majority vote of the city council. ('15 c. 125 § 16)

[1650—]19. **Same—Rules—Merit system**—Said board shall adopt rules for the government of each of said departments and shall appoint, promote, suspend, dis-rate or discharge any member of the police or fire department, including all superior officers in each such department, in the manner provided by such rules. By such rules it shall define the duties and powers and fix the compensation of all persons serving in said departments, and may amend such rules and prescribe penalties for their violation. Such rules shall provide for the examination of all applicants for permanent positions, which shall be practical in their nature, public, and free to all persons desiring to take them. The selection, promotion and term of employment of all persons regularly serving or to serve in said departments shall be governed by the merit system, subject to reasonable limitations as to age, health, habits and character of such persons, but wholly without reference to their political affiliations. Said board shall have power to appoint and remove

special police officers to serve without pay from the city and to be subject to such rules as the board may prescribe.

All rules established by the board shall be changed only by an affirmative vote of four-fifths of all the members of the board.

The rules and regulations of any such city governing the management and control of said departments shall remain in force until superseded by rules adopted by said board. ('15 c. 125 § 17)

[1650—]20. **Same—Power to summon witnesses**—Said board shall have power to summon and compel the attendance of witnesses, to examine them under oath and to require the production of documentary evidence for use at any investigation or hearing had by said board in relation to the management of said departments or the control of the persons serving therein. Each member of the board shall have power to administer oaths to witnesses at such hearings. ('15 c. 125 § 18)

[1650—]21. **Same—Powers of board—Receipts**—Said board shall have power to buy, lease, sell, maintain and manage real and personal property for the use of said departments, but no purchase or sale of real property shall be made, unless authorized by a majority vote of the city council. It may establish, maintain and equip fire and police stations and substations and police precincts, electrical alarm and signal systems, and shall license and revoke licenses for junk-dealers and pawn-brokers in accordance with such ordinances as the city council may adopt on the subject of such licenses.

All receipts from the sale of property and from licenses shall be deposited with the city treasurer to the credit of the general fund of the city. ('15 c. 125 § 19)

[1650—]22. **Buildings and fire protection—Regulations and penalties**—That the city council or other governing body of each city in this state which now has or hereafter may have 20,000, and not more than 50,000 inhabitants, is hereby authorized and empowered to enact, adopt, repeal and amend, and to provide penalties for the violation of, any and all regulations, rules, resolutions and ordinances, not inconsistent with the laws of this state, relating to building within such city, and the planning, construction, repair, maintenance, fire protection and all other matters relating to buildings within such city.

For the purposes of this act the population of each city of this state shall be ascertained and determined according to the last census taken under and pursuant to the laws and authority of the state of Minnesota. ('17 c. 190 § 1)

[1650—]23. **Same—Inspection and regulation of construction**—Such city council or other governing body of such city shall have power by ordinance to provide for inspection and regulation of any construction work within such city, whether buildings, plumbing, heating, ventilating, wiring or any other construction whatsoever. ('17 c. 190 § 2)

[1650—]24. **Same—Building inspector and assistants—Powers**—Such city council or other governing body is authorized and empowered to appoint a building inspector and such assistants and employés as may be deemed necessary and define their powers and duties and fix their salaries and terms of service.

Such inspector and his authorized assistants under his direction, shall have power and be fully authorized to enter any dwelling house or other building at all hours between seven o'clock in the morning and six o'clock in the evening and examine all chimneys, stoves, furnaces, pipes and other parts of such buildings, and see that the ordinances of such city respecting the same are enforced.

Provided, however, that no such entry shall be made in any building occupied as a dwelling house without written notice of such entry for the purpose of inspection, served upon an occupant or person in charge of such dwelling house, by such inspector or under his direction at least 24 hours prior to such entry, unless such occupant or person in charge shall consent to such entry. ('17 c. 190 § 3)

[1650—]25. **Same—Duties of inspector**—Under such conditions as such city council or other governing body may prescribe, such inspector shall inspect or cause to be inspected all buildings and structures of any character whatsoever within such city and see that they conform to the laws of the state and the ordinances of such city, and shall enforce all laws of the state and all ordinances of such city applying to buildings within such city, whether relating to their planning, repair, fire protection or any other matter. ('17 c. 190 § 4)

[1650—]26. **Same—Powers of city**—For a more specific enumeration and definition of some of the powers hereinbefore granted and a fuller exposition thereof and as an additional grant thereto, such city or other governing body shall have the following power and authority:

(a) To regulate the construction, alteration, removal and repair of all structures and the permanent equipment thereof, and to provide for the safety of the occupants of all structures and all property in the vicinity thereof against danger from fire or panic or from methods of construction or installation detrimental to life, health or property, and to prohibit the use of buildings or parts of buildings when dangerous to life from collapse, fire or panic.

(b) To prescribe limits within which all roofs shall be covered by non-combustible material.

(c) To compel the installation in all structures of devices, appliances and arrangements for the preservation of life, health and property.

(d) To license, regulate, prohibit and suppress the erection and maintenance of signs, signboards, billboards and fences.

(e) To establish and enforce building lines and to regulate the height of buildings.

(f) To regulate the measurement and inspection of all building materials.

(g) To prescribe the depth of cellars, the material and method of construction of foundations and foundation walls, the material and manner of construction and location of drains and sewer pipes, the thickness, material and construction of party walls, partitions and outside walls, the size and material of floor beams, girders, piers, columns, roofs, chimneys, flues and heating apparatus, and apportion and adjust such regulations to the height and size of buildings.

(h) To regulate the construction and location of privies and vaults.

(i) To prohibit the construction of buildings not conforming to the prescribed standard, either in the whole city or within such building limits as it may prescribe, and to establish, alter or enlarge such building limits from time to time.

(j) To give such inspector and his assistants authority to enter upon, examine and inspect all buildings in process of construction in such city or within such building limits, and to direct the suspension of any such building operation as does not conform to such regulations.

Provided, however, that neither such city council or other governing body nor any inspector of such city shall have control or regulation of any building erected by the United States or the state of Minnesota. ('17 c. 190 § 5)

[1650—]27. **Sprinkling streets—Assessments**—That the city council or other governing body of each city in the state of Minnesota which now has or hereafter may have 20,000, and not more than 50,000, inhabitants, is hereby authorized and empowered to sprinkle its streets, alleys, highways, public ways and public grounds, without letting the same by contract, and to levy assessments for all or any portion of the cost thereof upon property to be benefited thereby as such city council or other governing body may determine, in the manner and as hereinafter designated, notwithstanding any provisions in the charter of such city or the general laws of this state to the contrary.

For the purposes of this act the population of each city of this state shall be ascertained and determined according to the last census taken under and pursuant to the laws and authority of the state of Minnesota. ('17 c. 509 § 1)

[1650—]28. **Same—Sprinkling defined**—Sprinkling as used or referred to in this act shall be deemed to include sprinkling, flushing, saturating or treat-

ing the surface of streets, alleys, highways, public ways and public grounds with water, oil or any kind of fluid, mineral or other substance, for the purpose of preventing dust in the atmosphere or on the surface of such streets, alleys, highways, public ways and public grounds. ('17 c. 509 § 2)

[1650—]29. Same—Sprinkling districts—Plans and specifications—Such city council or other governing body may at any time determine by resolution what territory in such city shall be sprinkled during the sprinkling season of that year and may divide such territory into two or more sprinkling districts, describing the boundary lines of each such district. Each district so determined shall be designated by number, and thereafter all reference to such district by number in any notice required by this act or in any other proceeding having reference thereto, shall be deemed a sufficient designation.

Such city council or other governing body may cause to be prepared plans and specifications therefor and may approve the same and upon such approval they shall be filed with the clerk or recorder of such city for the inspection of all parties interested.

Such resolution shall be published once in the official paper of such city. ('17 c. 509 § 3)

[1650—]30. Same—Meeting of council—Notice—Resolution—Equipment and materials—After the adoption of such resolution and the approval and filing of such plans and specifications as aforesaid, such city council or other governing body shall designate a time, not less than ten days distant, and a place at which it will meet and act in relation to the doing of the proposed sprinkling, and direct that notice be given by the clerk or recorder of such meeting, and the time, place and purpose thereof. Such notice shall state that the plans and specifications therefor are on file with the clerk or recorder, and that all persons interested will be heard at the time and place of such meeting, and shall be published once in the official paper of such city at least five days before the time of such meeting. At such meeting an opportunity shall be given by such city council or other governing body to any and all interested parties to be heard for or against the proposed sprinkling, and such city council or other governing body may then, by an affirmative vote of a majority of all its members, by resolution in writing, determine what sprinkling shall be done during that year and the manner of doing the same, or may in its discretion, from lack of a quorum or for any other reason postpone the consideration and decision of the whole matter, or any part thereof to a future definite time, of which postponement all parties interested shall be required and deemed to take notice. Such resolution may designate what officer or officers of such city shall supervise such work.

Such city council or other governing body is hereby authorized and empowered to purchase all necessary horses, wagons, sprinklers, vehicles, equipment and outfit and all materials necessary or required for proper sprinkling in such city. ('17 c. 509 § 4)

[1650—]31. Same—Duties of clerk and mayor—After the adoption of the resolution last mentioned it shall be signed by the president of such city council or other governing body and attested by the clerk or recorder of such city, and on the next day after the adoption thereof the same shall be transmitted by such clerk or recorder to the mayor of such city for his approval. If the mayor approves the same, he shall append his signature with the date of his approval thereto and return the same to the clerk or recorder within five days, Sundays excepted, from the date of its transmission to him. If he declines to approve the same, he shall, within said period of five days, Sundays excepted, return the same to the clerk or recorder with a statement of his objections thereto, to be presented to such council or other governing body at its next meeting thereafter.

Upon the return of said resolution to the city council or other governing body without the mayor's approval, the same shall again be put upon the passage of the same, notwithstanding the objections of the mayor, and if, upon such vote, which shall be taken by a call of the roll, two-thirds of all the members of such city council or other governing body shall vote in favor of the

adoption of such resolution, the same shall be declared adopted and shall have the same force and effect as if approved by the mayor.

If such resolution, transmitted to the mayor, shall not be returned by him to said clerk or recorder within said five days, Sundays excepted, after presentation thereof to him, the same shall be deemed to be approved by him, and he shall deliver the same to the clerk or recorder on demand. Such resolution need not be published. ('17 c. 509 § 5)

[1650—]32. **Same—Modification of district**—At any time after the adoption of the resolution last mentioned, such city council or other governing body may, by resolution in writing, approved by the mayor, or by a two-thirds vote over his objections, without notice or publication of such resolution, amend or modify the same by adding to the territory of any sprinkling district or omitting any portion thereof or by changing the method or manner of sprinkling therein for the remainder of that year; and such city council or other governing body may at any time discontinue sprinkling from time to time or altogether in any sprinkling district. ('17 c. 509 § 6)

[1650—]33. **Same—Assistants**—Such city council or other governing body may, from time to time, appoint one or more persons to assist the officer designated to supervise such sprinkling, and may fix their compensation and terms of service, or provide that they shall serve during its pleasure. ('17 c. 509 § 7)

[1650—]34. **Same—Sprinkling supervisor to keep cost**—The supervisor of sprinkling shall keep an accurate account of the cost of such sprinkling, including the compensation paid to such assistant or assistants, in each of such sprinkling districts, and promptly upon the completion of each season's sprinkling under the provisions of this act, transmit to such city council or other governing body a detailed statement thereof. ('17 c. 509 § 8)

[1650—]35. **Same—Assessment by council**—The city council or other governing body shall then proceed without unnecessary delay to apportion and assess the entire cost of such sprinkling including all expenses in connection therewith or such portion thereof as it may determine, upon the real estate by them deemed benefited, to the extent of the benefits received, and in proportion, as near as may be, to the benefits resulting thereto from such sprinkling.

In all proceedings for the making and collection of any assessment under this act, letters, figures and the usual and customary abbreviations may be used to designate lots, parts of lots, lands, blocks, additions, subdivisions, sections, townships, ranges and parts thereof, the year and the amounts. Such assessments shall be in writing, in which shall be given a description of each lot or parcel so assessed, the name of the owner thereof, if known, and the exact amount assessed thereto. ('17 c. 509 § 9)

[1650—]36. **Same—Meeting of council—Notice**—Upon the completion of such assessment such city council or other governing body shall direct that the same be placed on file with the clerk or recorder, and shall appoint a time, not less than ten days distant, and a place when and where it will meet to consider and act upon such assessment, and such clerk or recorder shall thereupon cause notice of such meeting, and the time, place and purpose thereof, to be given by one publication of such notice in the official newspaper of such city, at least five days prior to the time appointed for such meeting. Such notice shall state that the assessment has been made for sprinkling, referring to the number of each district sprinkled for which the assessment was made and that the assessment is on file with the clerk or recorder and open to the inspection of all parties interested, and that all objections to the same must be filed in writing with the clerk or recorder of such city at least one day (Sunday and legal holidays excepted) prior to said meeting, and that unless sufficient cause is shown to the contrary, the same will be confirmed. A reference in such notice to the number of the sprinkling district for the sprinkling of which such assessment has been made, shall be deemed a sufficient reference to the property embraced in such assessment. ('17 c. 509 § 10)

[1650—]37. **Same—Council to consider assessment—Objections—Confirmation, etc.**—At the time and place so appointed, as provided in section 10 hereof [1650—36], said city council or other governing body shall proceed to consider said assessment and hear all objections which parties interested may desire to make thereto, and may adjourn as often as deemed expedient to a future definite time and place, and if none of the members are present the clerk or recorder may adjourn to some other convenient time and place, of which postponement all parties interested shall be required and deemed to take notice. All objections to said assessment shall be in writing and filed with said clerk or recorder at least one day (Sunday and legal holidays excepted) prior to the said meeting; provided however, that said city council or other governing body, may, in its discretion, allow any party interested, who has omitted to file his objection as aforesaid, to do so at the time of such meeting. Such city council or other governing body may, at any time cause a new notice of such hearing to be given, if the previous notice is deemed by it to be imperfect, or for any other reason.

Said city council or other governing body, after consideration may make such correction or changes in said assessment and may revise the same as it may deem necessary or proper, and confirm and establish the same.

The assessment, when so confirmed and established, shall be final, conclusive and binding upon all parties interested therein, and the several amounts charged in such assessment as so confirmed and established against the several lots and parcels of land therein mentioned shall be enforced and established as hereinafter provided: If any assessment be annulled or set aside, the said city council or other governing body may proceed de novo to make a new assessment in like manner, and like notice shall be given as herein required in relation to the first, and all parties interested shall have the like rights. ('17 c. 509 § 11)

[1650—]38. **Same—Assessments to be liens**—All assessments levied under the provisions of this act shall be a paramount lien on the real estate upon which the same may be imposed, from the date of the confirmation of such assessments. ('17 c. 509 § 12)

[1650—]39. **Same—Record of assessments**—The clerk or recorder of each such city shall keep in his office, in books to be provided for that purpose, a correct record of all assessments confirmed by the city council or other governing body and authorized by this act. Said books shall be properly ruled and headed so as to show at all times a substantial description and history of each assessment on each lot or parcel of ground, whether paid to the city treasurer or the county treasurer or remaining unpaid. ('17 c. 509 § 13)

[1650—]40. **Same—Warrant for collection**—When any such assessment shall be confirmed and established as aforesaid, the clerk or recorder of such city shall issue a warrant for the collection thereof under the seal of such city and signed by the mayor and the clerk or recorder thereof, containing a printed or written copy of the assessment roll as so confirmed, or so much thereof as describes the real estate and the amount of the assessment in each case, and deliver the same to the city treasurer of such city as soon as practicable thereafter.

The clerk or recorder shall in each instance take a receipt for such warrant and place the same on file. ('17 c. 509 § 14)

[1650—]41. **Same—Notice of assessment**—Upon the receipt of such warrant the city treasurer shall forthwith give notice by publication once in the official newspaper of such city, that such warrant is in his hands for collection, briefly describing its nature and stating that such assessment is for sprinkling. A reference in such notice to the number of the sprinkling district for the sprinkling of which such assessment has been made, shall be deemed a sufficient reference to the property embraced in such assessment. Such notice shall require all persons interested to make payments within thirty days from the date of such notice, at his office or at the option of said treasurer, at some bank in said city acting for him. ('17 c. 509 § 15)

[1650—]42. **Same—Duties of treasurer, clerk, and county auditor—Tax list**—If the assessments charged in any such assessment warrant shall not be paid within thirty days after the publication of the notice by the city treasurer that he has received such warrant for collection, he shall return to the clerk or recorder of such city a list, duly certified by said treasurer of the assessments so made which still remain unpaid, giving in such list the description of the several lots and parcels on which the assessments have not been paid, with the name of the respective owners thereof, if known, and the several amounts assessed thereto.

Such clerk or recorder shall thereupon add to each delinquent and unpaid assessment a penalty of ten per cent thereof and transmit a duly certified list of such unpaid assessments with such penalty added, with a description of the several lots and parcels of land on which the same are made, and the names of the respective owners thereof, if known, to the auditor of the county in which such city is located, who shall enter the several amounts of said unpaid assessments on the tax list for such city for the next ensuing year, and levy the same upon the several lots and parcels of land to which the same are respectively chargeable, and the same shall thereupon be enforced and collected as other taxes on real estate are enforced and collected under the general laws of this state. ('17 c. 509 § 16)

[1650—]43. **Same—Assessment, when set aside**—No such assessment shall be set aside or held invalid by reason of any informality in the proceedings prior to the entry thereof on the tax list by the county auditor, as heretofore required, unless it shall appear that by reason of such informality or irregularity substantial injury has been done to the party or parties claiming to be aggrieved. ('17 c. 509 § 17)

[1650—]44. **Same—New assessments**—If for any cause the proceedings of the city council or other governing body of any such city, or any of its officers, may be found irregular or defective, whether jurisdictional or otherwise, or so deemed by the city council or other governing body, it may make a new assessment from time to time, and as often as needs be, upon all real estate benefited and on which no payment has been made for said sprinkling, until the full amount of all benefits assessed have been realized from the real estate so benefited by such sprinkling. ('17 c. 509 § 18)

[1650—]45. **Same—Sprinkling, how paid for**—The work of sprinkling authorized by this act shall be paid for upon monthly or semi-monthly estimates, made by the person having supervision of such sprinkling and approved by the city council or other governing body, and that portion of the cost of sprinkling which is to be assessed against property benefited thereby shall be paid from the local improvement fund of such city; and all assessments paid for such sprinkling shall be credited to such fund. ('17 c. 509 § 19)

[1650—]46. **Same—Certificates of indebtedness**—If, at any time, it is found that the moneys in said fund will not be sufficient to pay the portion of said estimates which will be payable therefrom as the work progresses, such city is hereby authorized and empowered to issue from time to time its certificates of indebtedness, in anticipation of the collection of such assessments, in such amount or amounts as the city council or other governing body may deem necessary to pay for such portion of the estimates as the same become payable, and to negotiate and sell such certificates upon the best terms for said city, subject, however, to all the following conditions. ('17 c. 509 § 20)

[1650—]47. **Same—Certificates, how authorized—Form—Interest**—The issue of such certificates shall first be authorized by a resolution in writing passed by an affirmative vote of a majority of all the members of the city council or other governing body and approved by the mayor of such city.

If the mayor shall not approve such resolution within five days after its transmission to him, then the same may be passed by said city council or other governing body, notwithstanding his objections thereto, by a two-

thirds vote of all its members, and shall then have the same force and effect as if approved by the mayor.

Such resolution shall designate the number of such certificates so to be issued, the principal sum of each certificate, the time or times when payable and the purpose for which the money realized thereon is to be paid.

Such certificates shall be numbered consecutively, without regard to the time of issue, and shall be made payable to bearer or to the order of the person or corporation to whom the same may be delivered, as the city council or other governing body may designate, and shall draw interest at a rate not exceeding six per cent per annum and be payable at the city treasury of such city not later than one year from the day of issue and be payable out of the local improvement fund and no other of such city. They shall be signed by the mayor and attested by the clerk or recorder of such city and shall have imprinted thereon the corporate seal of such city.

No certificate shall be sold for less than par value and accrued interest. ('17 c. 509 § 21)

[1650—]48. Same—Record of certificates—Proceeds, how used—The clerk or recorder and the city treasurer shall each keep an accurate record of all certificates so issued, in books to be kept for that purpose.

Any and all proceeds realized from the sale of such certificates shall be turned into the local improvement fund of such city and neither the said certificates nor the proceeds from the sale thereof, shall be used for or devoted to any purpose other than that designated in the resolution authorizing their issue. ('17 c. 509 § 22)

[1650—]49. Same—Irregularities in proceedings—No irregularity or informality in any of the proceedings for sprinkling or in the making or levying of any assessment in anticipation of the collection of which such certificates are issued, shall affect the liability of such city to redeem the same, but the faith and credit of such city issuing the same is hereby irrevocably pledged for the redemption of the certificates so issued. ('17 c. 509 § 23)

[1650—]50. Same—Redemption and cancellation of certificates—The city treasurer shall immediately after any such certificate shall have been redeemed by such city, cancel the same by a writing upon the face thereof showing date of redemption and the amount and to whom paid, and shall affix his signature thereto, and within twenty-four hours thereafter transmit such certificate so cancelled to the clerk or recorder and take his receipt therefor, who shall immediately make an entry of such redemption and cancellation in his certificate register and enter such payment in the said fund account. ('17 c. 509 § 24)

[1650—]51. Same—Payment of assessments—Cancellation—Any person owning or interested in any piece or parcel of land against which an assessment is levied, as herein provided, may pay such assessment, together with the penalty thereon, to the treasurer of such city at any time before the first Monday in January next following the date on which the same has been certified to the clerk or recorder or to the county auditor, as hereinbefore provided, and said treasurer shall thereupon give his receipt in duplicate for the same, which shall be sufficient authority for the cancellation of such assessment by the county auditor or county treasurer on his books, or by such clerk or recorder, as the case may be. After the first Monday in January next following the date on which any delinquent assessment shall have been certified to the county auditor, the same must be paid to the county treasurer the same as state and county taxes.

Upon the presentation of one of said duplicate receipts by such owner or interested party to the county auditor or county treasurer, as the case may be, he shall cancel such assessment on his books, or if the same has not yet been transmitted to the county auditor, said clerk or recorder shall thereupon cancel such assessment on the delinquent list containing the same. The county auditor, if such receipt be filed with him, shall report the same in the next settlement thereafter with said city treasurer, for taxes collected and payable to such city treasurer.

On the first Monday of each year the city treasurer shall certify to the clerk or recorder of such city all payments made to such treasurer, of assessments certified to the county auditor for collection, and such clerk or recorder shall enter all such payments in the proper records therefor. ('17 c. 509 § 25)

[1650—]52. **Same—Affidavit of publication**—When any notice is required to be published in any newspaper, under the provisions of this act, an affidavit of the publisher or printer of such newspaper, or of the foreman or clerk of such publisher or printer, annexed to a printed copy of such notice taken from the paper in which it was published and specifying the time when, and the paper in which such notice was published, shall be prima facie evidence in all cases and in all courts of this state of the facts contained in such affidavit. ('17 c. 509 § 26)

[1650—]53. **Same—Auditor not to certify taxes paid until assessments paid**—The county auditor shall not issue his certificate that taxes are paid on any piece or parcel of land upon which any delinquent assessment authorized by this act has been certified to him, until such assessment with penalties and interest thereon, if any, has been fully paid. ('17 c. 509 § 27)

[1650—]54. **Same—Charters not repealed**—This act shall not be deemed to repeal any provision of any special or home rule charter in force at the date of the passage hereof. ('17 c. 509 § 28)

[1650—]55. **Reconstructing and repairing bridges**—That each city in the State of Minnesota which now has or hereafter may have 20,000 and not more than 50,000, inhabitants, is hereby authorized and empowered to reconstruct, rebuild, pave, repair and improve any foot and carriage bridge and approaches thereto and any part or parts thereof across a river adjacent to such city, and thereafter to maintain the same.

For the purposes of this act the population of each city of this state shall be ascertained and determined according to the last census taken under and pursuant to the laws and authority of the State of Minnesota. ('15 c. 14 § 1)

Section 8 repeals 1915 c. 2.

[1650—]56. **Same—Bonds**—That the city council or other governing body of each city referred to in Section one of this act is hereby authorized and empowered by a vote of two-thirds of all its members to issue the bonds of such city, with coupons attached, to the amount of one hundred twenty-five thousand dollars, or so much thereof as said council or governing body may deem necessary, for the purpose of reconstructing, rebuilding, paving, repairing and improving the bridge and approaches or any part or parts thereof, mentioned in this act. ('15 c. 14 § 2)

[1650—]57. **Same—Denominations of bonds and when payable**—One-half in number of said bonds shall be of denominations of one hundred dollars each and the other half in number of said bonds shall be of denominations of one thousand dollars each, and shall be payable at such place and at such times within thirty-five years from the date of their issue as the city council or other governing body may designate, and any portion of said principal sum not exceeding twenty thousand dollars may be made payable in any one year, any provision in the charter of such city or the general laws of this state to the contrary notwithstanding. ('15 c. 14 § 3)

[1650—]58. **Same—Form of bonds—Interest**—Said bonds shall be drawn payable to bearer or to the order of the person or corporation to whom they may be delivered, as the city council or other governing body may deem best and shall draw interest, payable annually or semi-annually at such place as such council or governing body may determine, at a rate not exceeding five per cent per annum to be represented by coupons attached to said bonds. Said bonds shall be signed by the mayor and attested by the recorder or clerk of such city and the corporate seal of such city shall be imprinted thereon, and said coupons shall be signed by the recorder or clerk or a fac-simile of his signature be printed thereon. ('15 c. 14 § 4)

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[1650—]59. **Same—Taxes for payment of bonds**—The city council or governing body of such city is hereby authorized and empowered to and shall make provision, by the levying of taxes, for the payment of the principal and interest of the bonds issued under and by virtue of the authority and power granted by this act, as the same may become due. ('15 c. 14 § 5)

[1650—]60. **Same—Proceeds of bonds, how used**—The proceeds of all bonds issued under and by virtue of this act shall be devoted to the purpose or purposes herein contemplated, including the fees and expenses of the engineers employed in connection therewith. ('15 c. 14 § 6)

[1650—]61. **Same—Bonds, when to be issued**—No bonds shall be issued by virtue of this act after three years from the date of its passage. ('15 c. 14 § 7)

PROVISIONS RELATING TO CITIES OF THIRD CLASS

1670. **Water works—Power to acquire**—
123-48, 142+1042.

[1727—]1. **Dams on lakes in parks in cities under home rule charters**—The council of every city of the third class operating under a home rule charter and which city owns and maintains a public park on any stream, the navigable portions of which lie wholly within the limits of this state, is hereby empowered to erect and maintain a dam over and across such stream for the purpose of using the back water thereof for an artificial lake or pool connected with such public park, provided that such dam shall be built in such a manner that it will not force the waters of said stream over the high water or meandered borders of such stream. ('15 c. 198 § 1)

[1727—]2. **Same—Plans to be approved by whom**—No dam as hereinbefore provided for shall be built or commenced until the location and plans thereof have been submitted to and approved by the chief of engineers and the secretary of war of the United States, and until the location and plans thereof have been submitted to and approved by the state drainage commission of the State of Minnesota, and it shall be unlawful to deviate from such plans either before or after completion of the structure unless the modification of said plans has previously been submitted to and received the approval of the chief of engineers and secretary of war of the United States and said state drainage commission. ('15 c. 198 § 2)

[1727—]3. **Same—Authority subject to laws of state and United States**—The authority and power herein conferred upon the council of said cities is given subject to all the laws, rules and regulations of the State of Minnesota and the United States relating to such matters. ('15 c. 198 § 3)

[1727—]4. **Donations of land in adjoining state for park purposes to certain cities**—That any city in this State having a population of not less than ten thousand inhabitants nor more than twenty thousand inhabitants, situate upon the boundary line between the State of Minnesota and any other city of the United States, is hereby authorized to accept any donation of land situate in any State adjoining the State of Minnesota and adjacent to such city for park purposes, and to acquire title to lands for such purposes and to improve and govern the same by the same authority as any such city may have with reference to similar land situate within the city limits of such city, and to expend money for the improvement of any such park. ('17 c. 127 § 1.)

[1727—]5. **Same—Acceptances heretofore made legalized**—That any acceptance of any conveyance of any lands situate as aforesaid, heretofore made by any such city, is hereby validated and legalized. ('17 c. 127 § 2)

[1727—]6. **Annual tax for current expenses in cities not under home rule charters**—The city council or other governing body of any city in the State of Minnesota now or hereafter having more than ten thousand and not more than twenty thousand inhabitants, not operating under a home rule charter, in addition to the powers possessed by such city council or other governing body, is hereby authorized and empowered, acting by resolution duly adopted, to levy annually at the time other city taxes are levied such

tax on all the taxable property in such city as it shall deem necessary, in addition to the other revenues of the city applicable thereto, to defray the current expenses of such city for the next fiscal year; but no such tax for current expenses shall in any one year exceed two per cent of the assessed value of all the taxable property in such city. ('15 c. 188 § 1)

[1727—]7. **Same—Application to what cities**—This act shall not apply to cities now or hereafter governed under a charter framed pursuant to Section 36, Article 4, of the constitution of this state, and the several acts of the legislature authorizing cities to adopt their own charters. ('15 c. 188 § 2)

PROVISIONS RELATING TO CITIES OF FOURTH CLASS

1729. **Same—Proceedings—Jurisdiction acquired—**

De facto public corporations and attack on proceedings for incorporation (see 132-59, 153+1040). Municipal Corporations, §18; Quo Warranto, §8.

1762. **Water works and light plants—Power to acquire—Bonds—Condemnation**—Whenever at any general or special election, held in any city in the class hereinafter mentioned, the electors thereof by an affirmative vote of three-fifths of the legal voters, voting thereat, so determine, each city in the State of Minnesota, having ten thousand inhabitants or less or existing under special or general law, or under a home rule charter is hereby authorized and empowered, in addition to all powers to issue bonds conferred upon it by its city charter, or by virtue of any general or special law, and in addition to all other bonds that it is by law authorized to issue, to issue its bonds in the aggregate amount hereinafter mentioned to be determined as hereinafter set forth and to dispose of the same as hereinafter provided, and to use the proceeds thereof for the purpose of acquiring, constructing, extending, enlarging, improving or purchasing municipal waterworks, or light, or power plants or either or all or any part thereof, and the lands or flowage rights therefor whether the whole or any part of such plant or the land or flowage rights therefor is situate within or without the corporate limits of the city, but in each case the said city may either acquire such waterworks system or light or power plants or any part or portion thereof or any or all lands or flowage rights necessary therefor by purchase at such price not exceeding its fair value and on such terms as may be agreed on between said city and the owner or owners thereof or by condemnation. The procedure in the event of condemnation shall be that prescribed by Chapter 41 General Statutes of 1913 and any amendments thereof or that prescribed by said city's charter and the purchase price of said plant or system or portion thereof, or lands or flowage rights as so fixed by agreement or condemnation may be paid out of the proceeds of the bonds by this act authorized to be issued and the balance of the proceeds, if any, may be used for extension, enlargement or improvement of such plant or plants so acquired. ('09 c. 43 § 1, amended '17 c. 134 § 1)

1766. **Same—Terms of**—Such bonds shall be of such denomination as the city council may determine, shall be payable at such place as the city council may designate; at such times, not more than thirty years from date of issue, as the city council may determine; shall be made payable to bearer, or to the order of the person or corporation to whom they may be delivered, as such city may deem best, and shall draw interest payable semi-annually, at such place as the city council may determine, at a rate not exceeding five per cent per annum, to be represented by coupons attached to said bonds. Said bonds and coupons shall be signed by the mayor and attested by the clerk, or similar officer, or recorder of such city, and the corporate seal of the city shall be imprinted upon said bonds. ('09 c. 43 § 5, amended '17 c. 507 § 1)

[1773—]1. **Disposition of surplus electricity**—Any city of this state now or hereafter owning and operating an electric light and power plant for the production and distribution of electricity, and now or hereafter having a population of ten thousand (10,000) inhabitants, or less, shall be authorized and empowered to dispose of any surplus electricity so produced to private consumers desiring the same residing outside the corporate limits of said city, at

such rates and upon such terms as the city council, or other governing body of such city, may deem proper. ('15 c. 34 § 1)

[1773—]2. **Change of system of electric street lighting—Petition—Power of council**—Whenever a petition shall be presented to the common council or any other governing body of any city of the fourth class in this state, whether operating under a home-rule charter or the general laws of this state, which petition asks that said city council change the plan or system of electric street lighting or any part thereof in use in said city, or change the equipment for electric street lighting in use in said city at the time of presenting said petition and such petition is signed by the owners of a majority in area of the real estate of such city, which may be deemed by said common council to be specially benefited, then and in such case the said common council or other governing body may make such investigation as to the advisability, expediency and feasibility of the doing of the things asked in said petition as it deems necessary, and, if it deems it advisable, expedient and feasible to do them or any of them, it may and is hereby authorized and empowered to grant such petition or any or all of its requests at its discretion. ('17 c. 180 § 1)

Section 3 repeals 1915, c. 263.

[1773—]3. **Same—Special assessment**—In case such petition shall be granted and to the extent rendered necessary by the granting of the same in whole or in part, the said common council or other governing body may levy and collect by special assessment the entire or a portion of the cost and expense of such change, alteration, replacement, reconstruction or installment against such real estate as may, in the judgment of said common council, derive special benefits therefrom. ('17 c. 180 § 2)

[1773—]4. **Municipal or private ownership heating plants**—Any city of this state having a population of not more than 10,000 inhabitants, is hereby authorized and empowered:

(a) To grant to any person, persons, company or corporation, the right of the use of the streets, alleys and other public grounds of such city for the erection, operation and maintenance of any heating system to furnish heat to the inhabitants of such city, the same to be on such terms and subject to such conditions as the governing body of such city shall determine, including therein the right to sell to such person, persons, company or corporation, at a profit to such city, any steam generated or water heated by any plant owned and operated by such city, and to make contracts and arrangements for the furnishing of heat to the inhabitants of such city thereby, and for the regulation and control of such heating system.

(b) To grant to any person, persons, company or corporation the right of the use of the streets, alleys and other public grounds of such city for the installation, without any expense to such city, of pipes, conduits and other equipment necessary and incidental to the construction, operation and maintenance of a heating system to furnish heat to the inhabitants of such city, the same to be on such terms and subject to such conditions as the governing body of such city shall determine, including the right to make all necessary and incidental contracts and arrangements for the furnishing of heat to the inhabitants of such city, at a profit to such city, from any steam generated or water heated by any plant owned and operated by such city, including the right to acquire, own, operate and enlarge the heating system after the same shall have been installed, and including the right to issue certificates of indebtedness of such city payable in heat to be sold by such city. ('17 c. 122 § 1)

[1773—]5. **Same—Obligation—Limitation on indebtedness**—The obligation incurred by any such city in the making of such contracts and arrangements shall not be considered as a part of its indebtedness under the provisions of its governing charter or of any law of this state fixing a limit of indebtedness for such city. ('17 c. 122 § 2)

[1773—]6. **Fixing rates of for electric current of persons and corporations not having franchise, etc.—Resolution**—In all cities of the fourth class in this state where any person or corporation sells, conveys or delivers electricity or

electric current that is manufactured, created or obtained in another state and where such person or corporation occupies or uses any of the streets, alleys or public grounds of such city for the purpose of erecting or maintaining any towers, masts, poles, wires or conduits therein for the purpose of conveying or conducting electricity or electric current, or conducts or conveys electricity or electric current into or through such city, without having a written franchise, license or authority from such city therefor, the city council or governing body of such city may, by resolution, at any regular or special meeting thereof, name, fix and regulate an amount in money that such person or corporation shall pay into the city treasury of such city each month for the privilege of so doing, or so using such streets, alleys or public grounds. ('15 c. 311 § 1)

[1773—]7. **Same—Effect of resolution**—Such resolution shall state and fix the amount of such monthly payments and the time and manner of paying the same and the amount so stated and fixed shall be a legal charge against any such person or corporation and may be recovered by such city in a civil action in any court having jurisdiction. ('15 c. 311 § 2)

[1773—]8. **Same—Vested rights not granted**—Nothing herein contained shall be construed as granting to any such person or corporation any vested rights, license or authority in such city, or to prevent any such city from at any time causing the removal from the streets, alleys and public grounds thereof of any and all towers, masts, poles, wires or conduits, of such person or corporation. ('15 c. 311 § 3)

[1773—]9. **Proceedings for construction of lighting and heating plants in certain cities not under home rule charters legalized**—That whenever and in all cases where any city of the fourth class, having a population of less than ten thousand (10,000) inhabitants and not operating under a home rule charter, has proceeded to construct, and is operating a heating system in connection with its lighting and power plant for the furnishing of heat to the inhabitants of said city and for the purpose of raising the necessary money to pay for the installation thereof has issued the warrants of the said city and thereby has obtained the money which has actually been used for such purpose, all steps taken, things done, and acts and proceedings had, done and performed, by such common council, or other governing body of such city, in the construction of and operation of such heating system and all orders issued by such governing body for the procuring of money for such purpose are hereby legalized, validated, ratified and confirmed and made the legal, valid and binding obligations of said city. And in all such cases where such heating plants have been constructed, and are in actual operation in any city of the fourth class, authority and power is hereby granted such city or cities to continue to maintain and operate said heating plants together with the right to make such extensions and improvements as may be necessary and to provide for the financing of the same as in the case of municipal lighting and power plants and at its option may sell and dispose of the same. Provided that the provisions of this act shall not apply to any action or proceeding now pending in any of the courts of this state. ('17 c. 125 § 1)

[1773—]10. **Proceedings for construction of water plants and sewer system, etc., in certain cities under home rule charters legalized**—In any case in any city of the fourth class, operating under home rule charter authorizing the construction, maintaining, extending or enlarging and improving of a suitable water plant and sewer system therein, and the establishment and maintaining of a permanent improvement revolving fund therefor, or either of said plants or said revolving fund, where the governing body thereof has determined to extend or enlarge such water plant or sewer system, or both, and has provided for a permanent improvement revolving fund therein, in accordance with the provisions of its charter, and has issued warrants or orders for any of said purposes or all thereof, not exceeding the actual cost of such improvements, the action of such governing body shall be and hereby is ratified and declared effectual, and bonds voted or that may be issued in pursuance of any resolution or ordinance passed by a four-fifths vote of all the members of such

governing body, to an amount not to exceed the actual cost of such improvement or improvements, are hereby legalized and declared valid. ('17 c. 195 § 1)

[1773—]11. **Same—Pending actions, etc.**—This act shall not apply to or affect any action or appeal now pending in which the validity of such proceedings or of such bonds is called in question. ('17 c. 195 § 2)

[1778—]1. **Delegating authority to improve highway to adjoining municipality**—Any city of the fourth class in this state may delegate to an adjoining municipality the authority to improve any public highway within such city connecting it with such an adjoining municipality or it may make a joint contract with such adjoining municipality for the improvement of such highway, under the joint supervision of both municipalities. ('15 c. 330 § 1)

[1778—]2. **Same—Payment of money by city delegating authority**—If the authority to improve such highway is delegated to any adjoining municipality by such city it may cause to be paid over from time to time for such improvement during the progress thereof or upon the completion thereof, to such municipality or such contractor as may make such improvement, any money that such city may have in its treasury available for the payment of such improvement. ('15 c. 330 § 2)

[1778—]3. **Constructing or rebuilding curbs and gutters in certain cities—Petition—Resolution**—Whenever the governing body of any city have a population of ten thousand inhabitants or less, incorporated under the general laws of this state, shall deem it necessary and expedient to construct or rebuild any curb or gutter, or both, in said city, they may, acting on their own motion, and if a majority of the owners of the property fronting on the street or streets where it is proposed to construct or rebuild such curb or gutter, or both, shall petition the common council of such city therefor, they shall adopt a resolution to that effect, which resolution shall specify the place or places where such curb or gutter, or both, shall be constructed or rebuilt, the kind and quality of materials to be used therein, the width, the size and manner of construction thereof, and the time within which the same shall be completed, which shall not be less than forty days after the service of said resolution, as hereinafter provided.

Said resolution shall contain the names of the owners of all lots, parcels of lots, and parcels of ground fronting the street or streets where such curb or gutter, or both is to be constructed or rebuilt. ('17 c. 123 § 1)

[1778—]4. **Same—Service on abutting owners**—Such resolution shall be served upon the persons named in said resolution at least forty days prior to the time therein named for the completion of said curb or gutter, or both, in the following manner:

First: By causing a copy thereof to be handed to and left with each of the persons therein named who are residents of and within said city, and are actually therein.

Second: If any of the persons so named in said resolution are not residents of said city, or cannot be found therein, then said resolution shall be published in one issue of a newspaper regularly published in said city, in the English language, and having a general circulation therein, or in the designated official paper of said city.

Third: If there be no such newspaper published in said city, then such service and publication may be made by posting a copy of said resolution in at least three public places in said city, at least forty days prior to the time named therein for the completion of said curb or gutter, or both.

Affidavits shall be made by the person serving or posting said resolution of the manner, time and place of serving or posting the same, and by the foreman, editor or publisher of such newspaper of the time and manner of publishing the same, and such affidavits shall be attached to said resolution and with it filed with the city recorder. Any and all such service when made in accordance with the provisions of this act, shall for the purposes thereof, be deemed personal service of such resolution upon the persons named therein. ('17 c. 123 § 2)

[1778—]5. Same—Powers of council to cause work to be done—Benefits, how assessed, etc.—If such work shall not be fully done and said curb or gutter or both shall not be fully constructed or rebuilt in the manner and at the time prescribed in said resolution, then the governing body of said city may order the same to be done by the street commissioner or commissioner of public works, or cause the same to be done by contract let to the lowest responsible bidder, the entire expense thereof to be paid out of the general revenue fund of said city.

At any time within thirty days after said city shall have completed the construction of said curb or gutter or both as aforesaid, the city council or governing body of such city shall adopt a resolution fixing the time and place when and where they shall hear testimony of all persons interested or affected and ascertain the amount of benefits to property fronting on said curb or gutter, or both, or by reason of the construction thereof, and such resolution shall be served on all the persons named in the resolution adopted under section 1 [1778—3] of this act, and in the manner therein provided.

At the time and place named in said resolution said city council or governing body of said city shall hear any and all testimony offered by or on behalf of all parties interested or affected by the construction of said curb or gutter, or both, and for said purpose the president of the council or other presiding officer is hereby authorized to administer oaths to witnesses. Thereupon, by resolution, the city council or governing body of said city shall determine the amount of benefits caused by said construction, to each lot, part of lot, or parcel of ground fronting the street or streets where such curb or gutter, or both shall have been constructed or rebuilt as aforesaid; and a full and complete record thereof shall be made and kept by the city recorder in a separate book kept for that purpose, which record shall contain a description of the property benefited and charged with the construction of such curb or gutter, or both, the amount of benefit determined in each case as aforesaid, and when so determined the amount of each annual installment thereof; when transmitted to the county auditor of the county for assessment; the amount paid thereon and when paid. Such record to be used in making each annual levy and assessment, as in this act provided.

The amount of the benefits to each lot, part of lot, or parcel of ground so determined as aforesaid shall be and become a charge against the same and shall be assessed thereon, as in the case of county, city or state taxes, in three annual installments. ('17 c. 123 § 3)

[1778—]6. Same—Certificates of indebtedness—If such assessments for either or any of the purposes aforesaid be not fully paid to the city treasurer or other officer authorized by law to collect the same, within twenty days after said assessment shall have been made as aforesaid, the council or governing body of said city may issue or cause to be issued the certificates of indebtedness of said city or for the aggregate amount of unpaid balance of each of said assessments payable in three annual installments, each of which installments shall be represented by a separate certificate bearing interest payable annually at a rate to be determined by said city, not exceeding six per cent and payable as follows:

One payable on or before the first day of June of the year next following the issuance thereof; one payable the first day of June of the second year next following; and one payable the first day of June of the third year next following. Said certificates shall be made payable to the bearer and the same may be issued, negotiated and sold by said city for not less than their par or face value. The proceeds of such sale shall be paid into the city treasury, as the case may be. All of said certificates shall be substantially in the following form:

§..... Dated at, Minnesota 19....

The treasurer of the (city) of will pay to the bearer hereof the sum of dollars and cents on or before the 1st day of June, A. D. 19...., with interest from date hereof, at the rate of per cent per annum, interest payable on the first day of June, 19...., and the first day of June, 19.... This certificate represents one-third of the

amount expended in the construction of a (curb or gutter or both) in said (city) in the year 19....

A record of said certificates shall be made and kept by said city recorder, which record shall show the date the same was issued, amount thereof, date when due, to whom sold, amount sold for, for what purpose the same was issued, when the same was paid, and the amount paid as shown by the treasurer's books. Books shall be provided for said purposes. ('17 c. 123 § 4)

[1778—]7. **Tax levy—Payment of assessments**—After the completion of said curb or gutter or both as aforesaid, by said council or governing body of said city, said city council or governing body of said city shall annually on or before the first day of October, of each year until the whole of said assessments have been levied as herein provided, cause to be transmitted with the city taxes of that year, to the auditor of the county a statement of the amount of the annual installment next thereafter payable, together with interest at the rate of six per cent per annum on the amount of the total assessment from the time of the completion of the work to the first day of June next following its completion, or in case any installment or installments shall have been paid to the treasurer or transmitted to the county auditor and extended as herein provided for, then with interest at said rate for one year on the total of the installment or installments not previously so transmitted and remaining unpaid, and the said auditor shall extend the same with the other taxes in the duplicate statement of taxes annually transmitted by him to the county treasurer for collection and payment thereof and the same shall be enforced with and in like manner as city, county and state taxes are collected and payment thereof enforced and with like penalties and interest in case the same are not paid before the same become delinquent.

After the completion of said curb or gutter or both, the owner or owners of land adjoining the same or interested therein shall have the privilege of paying all or any portion of the cost of construction thereof to the treasurer of the city at any time within twenty days after the assessment of benefits and before said levy has been made and the amount so paid shall be deducted from the amount of said assessment. ('17 c. 123 § 5)

[1778—]8. **Same—Not to affect prior assessments**—This act shall not in any way affect any assessments heretofore made by any city or any assessment hereafter to be made by any city upon any contract made prior to the time when this act shall take effect. ('17 c. 123 § 6)

[1778—]9. **Same—Application to what cities**—The provisions of this act shall not modify or repeal the provisions of the city charter of any city of the fourth class having a home rule charter, but any such city may, however, avail itself of the benefits of this act. ('17 c. 123 § 7)

[1778—]10. **Sprinkling, oiling, curbing, and building gutters in cities not under home rule charters—Petition—Assessments**—In any city of this state having a population of ten thousand or less, the City Council shall have power and may cause any street or public highway therein or any part thereof to be improved or maintained by sprinkling, oiling, curbing, or building gutters upon a petition therefor signed by three-fourths of all owners of real estate bounding both sides of such street or highway and by the owners of at least one-half of the frontage of such street or highway or part thereof to be improved; or may order any curb or gutter to be built on one side of a street or highway or part thereof upon like petition if signed by the owners of at least one-half the frontage on such side of said street, highway, or part thereof, to be so improved; and without any petition it may order any curb or gutter previously built to be put in repair when necessary; and it may, upon such petition so providing, cause such sprinkling, or oiling to be done annually at such time or times as shall be required by said petition, the cost of such improvement, sprinkling, or oiling or any part thereof not less than one-half, may be assessed and levied by resolution of the council upon the lots or parcels of ground fronting on the street, public highway, or side thereof so improved, sprinkled, or oiled and most benefited thereby; and if such petition provides for sprinkling or oiling annually the council may make

such assessment or levy for such amount as will be required for such purpose during any such year, until a petition for the discontinuance of said sprinkling or oiling, similarly executed, is presented to the council. ('15 c. 285 § 1)

[1778—]11. **Same—Tax levy**—If the tax so levied proves insufficient to pay the cost or proportion thereof assessed to such property the council may levy an additional tax thereon to make good the deficiency. ('15 c. 285 § 2)

[1778—]12. **Same—Assessments, how made, etc.**—The assessments authorized in Sections 1 and 2 hereof [1778—10, 1778—11] shall be made by resolution of the council setting forth the purpose thereof, a description of each lot or parcel benefited, the name of its owner if known, and the amount assessed thereon. Two weeks published notice in a newspaper in the municipality shall be given of the contents of such resolution and of the time when the council will attend at its usual place of meeting to hear objections to the assessment or any part thereof; at such time and place the council shall consider all objections made and for that purpose may adjourn from day to day not exceeding three days and by resolution may modify such assessment or any part thereof. On October 10th next following, if any of the assessments be not previously paid to the city treasurer, the city clerk shall certify the same to the county auditor who shall extend all such unpaid amounts against the land assessed and the same shall be enforced, collected, and paid over to the city treasurer as in the case of other city taxes. ('15 c. 285 § 3)

[1778—]13. **Same—Application to what cities**—This act shall not in any manner apply to any city having a home rule charter adopted pursuant to Section 36, Article 4 of the Constitution of the state, and it shall not be construed as in any manner superseding, repealing, amending, or qualifying the provisions of any such home rule charter. ('15 c. 285 § 4)

[1778—]14. **Same—Acts not repealed**—This act shall not repeal, and shall not be construed as, repealing, amending, or modifying the power of any city to levy taxes, for any of the purposes herein provided, in accordance with any charter, law, or ordinance, but it shall apply equally to all cities as herein provided in addition to any such power. ('15 c. 285 § 5)

[1778—]15. **Same—Orders on treasury**—The city council may authorize orders to be issued on the city treasury, bearing not to exceed 6 per cent interest, to defray the cost of any such improvement until such time as the assessment above provided for shall be paid. ('15 c. 285 § 6)

[1778—]16. **"Public Utilities" and "Public Improvements" defined**—For the purposes of this act, the term "public utilities" shall include electric light, heat and power works, water works, gas works, ice plants, stone quarries and crushing works, telephone systems, public markets, public slaughtering establishments, creosoting and other paving works, and sewer systems; and the term "public improvements," shall include city halls, lock-ups, fire department buildings, streets, alleys, public ways, sidewalks, curbs, gutters, paving, parks, and all other public grounds and works thereon or therein, (not including library grounds and buildings), and all public buildings and structures other than libraries not hereinbefore specifically mentioned. ('17 c. 358 § 1)

[1778—]17. **Same—To what cities applicable**—This act shall apply to all cities of the fourth class; but it shall not be in force in any such city until its adoption by the electors as hereinafter provided. ('17 c. 358 § 2)

[1778—]18. **Same—Civil service commission—Qualifications of commissioners—Election—Terms—Oath**—In every city to which this act is made applicable there shall be a civil service commission, consisting of one member for every four hundred (400) of population according to the last preceding state or federal census, not, however, in any case to consist of less than nine nor more than fifteen members, all of whom shall be citizens of the state and residents of the city, and serve without compensation. No such commissioner shall at the time of his election, or while serving, hold any other office or employment under the city, the United States, the state of Minnesota, or any

public corporation or political division thereof, other than the office of notary public, nor shall he be interested, directly or indirectly, in any contract, express or implied, with such city, or any board, officer or department thereof, as a contractor, subcontractor, employee, or otherwise.

The members of the first commission shall be elected (conditionally on the adoption of this act) at the same election at which the question of the adoption of this act is submitted to the electors in any such city, and shall hold their offices until noon on the Thursday next following the first regular city election held more than one year after their election, and until their successors are elected and qualified; and thereafter such commissioners shall be elected at regular city elections for the term of two years and until their successors are elected and qualified; and in case a vacancy occurs at any time in said commission, the same shall be filled for the unexpired term by a majority vote of the remainder of the commissioners. Each commissioner before entering upon his duties shall subscribe and file with the city clerk or recorder an oath for the faithful discharge of his duties. ('17 c. 358 § 3)

[1778—]19. Same—Meetings of commission—Officers—Rules—The first commission shall hold its first meeting within ten days after its election, at a time and place to be fixed by the mayor of the city, written notice of which shall be given to each member by said mayor, either personally or by mail, at least three days before the date of such meeting. At said meeting, or as soon thereafter as practicable, at an adjourned regular or special meeting, the commission shall elect from its own members a president, a vice-president and a secretary. It shall be the duty of the president to preside at all meetings of the commission, and in his absence the vice-president shall preside. The secretary shall keep the records and files of the commission.

The commission shall, from time to time, fix the times and places of its meetings and adopt, amend and alter rules for its procedure. Four members shall constitute a quorum at any legally provided or called meeting for the transaction of any business, except as otherwise herein provided. ('17 c. 358 § 4)

[1778—]20. Officers and employees under commission—All officers and employees of such cities who are not elected by the people shall be under the jurisdiction of the civil service commission and subject to the provisions of this act. After the adoption of this act, the mayor, alderman, treasurer and recorder or clerk of such cities shall be elected by the people; but all other officers and employees, except as herein otherwise expressly provided, shall be elected, appointed or employed by the public utilities board, civil service commission or in other manner provided by this act and shall be included within the term "Employee" as used in this act. ('17 c. 358 § 5)

[1778—]21. Same—Public utilities board—Officers—City manager—Duties—Vacancy—Qualifications—Bond—Treasurer—In every city to which this act is made applicable there shall be a public utilities board, which shall consist of three members to be elected by the civil service commission, for the term of one year, subject, however, to removal at any time by a majority vote of the commission. Two of the members of such board, one of whom shall be designated as chairman, and the other as vice-chairman, may be elected from the members of the civil service commission, and shall serve without salary or compensation; but the third member of such board shall be selected without regard to his residence, and he shall receive such salary or compensation as shall be prescribed by the civil service commission, payable in monthly installments. He shall be designated as "City Manager," and shall have such authority and perform such duties in connection with all public utilities and public improvements of said city, subject to the general approval, control and direction of the public utilities board, as are hereinafter prescribed, and subject, also, to removal at the end of any month by written notice signed by the other two members of the board, whenever in their judgment the best interests of the city will be served thereby. He shall also be ex-officio city surveyor, city engineer and street commissioner, and may also at any time be made assistant secretary of the civil service commission, and, if elected thereto, may also hold the office of city recorder or clerk. If the office of city

manager shall be vacant at any time for any reason and the board is unable to find a person to fill the same having the requisite qualifications, the other two members of the board may make a temporary appointment, at a reduced salary, of some person with less than the prescribed qualifications; provided, however, that such temporary appointment shall at no time continue for a longer period than four months. After the adoption of this act by the electors of any city the common council of such city shall have no authority to elect or appoint any city surveyor, engineer, or street commissioner and upon the appointment and qualifications of a city manager under the provisions of this act the terms of all persons holding any such offices in any such city, by election, or by appointment of the common council, shall at once terminate. Such city manager shall be selected upon the recommendation of the other members of such board and with special reference to his qualification and fitness to act as executive officer of such board and to take charge of and manage the public utilities and public improvements of said city and discharge the duties of his ex-officio offices. Before entering upon the discharge of the duties of his office the city manager shall be or become a citizen of the United States and a resident of the city, and he shall take, sign and file with the city clerk or reporter, an oath for the faithful performance of his duties, and he shall also give a surety bond in form and amount to be prescribed by order or rule of the public utilities board. The city treasurer shall be ex-officio treasurer of such board, and shall keep the funds under control of such board separate from the other funds of said city and pay the same out only on the order of the chairman or vice-chairman of such board and countersign by the city manager. ('17 c. 358 § 6)

[1778—]22. **Same—Other duties of city manager—Powers**—In addition to the duties prescribed by law for the city surveyor, city engineer and street commissioner, the city manager shall be superintendent of all public utilities of the city, have charge of the operation and repair thereof and of all buildings, appliances and improvements used in connection therewith, as well as of the installation and maintenance of all extensions and appliances connected therewith; and shall perform such other and further duties, not inconsistent with law, as the public utilities board may, from time to time, by order, rule or direction, prescribe. He shall, by and with the consent and approval of the public utilities board, appoint all assistants and deputies required by him in the discharge of his duties, and may remove them for cause, subject to appeal to the public utilities board, and shall hire and discharge, from time to time, such subordinate employes and laborers as may be provided for by the public utilities board; and all such subordinate employes of every character elected, appointed or employed in connection with the public utilities or public improvements of the city shall be under the direct supervision and control of the city manager. ('17 c. 358 § 7)

[1778—]23. **Same—Police, health, library and fire departments—Taxes and assessments—Control of moneys—Estimates**—In all cities to which this act is made applicable the police, health, library and fire department shall continue to be governed in the same manner as before the taking effect of this act and all taxes and assessments of every kind shall be levied and collected in the same manner as before the taking effect of this act. All money derived from the operation and management of all public utilities shall be under the exclusive control of the public utilities board and all other money appropriated by the common council of this city, or in any other lawful manner, for any purpose or purposes connected with the public utilities or public improvements of any such city, shall, after the same has been so appropriated or provided, be under the exclusive control of such public utilities board; but the same shall be expended only for the purpose for which the same was appropriated or provided. The common council of any such city shall not appropriate any money or levy any tax or assessment of any kind for the purpose of obtaining any money for the use of such public utilities board unless a recommendation therefor, setting out in detail the purposes for which such money is required, together with estimates of the cost of the various items thereof, shall first have been presented to the common council of such city

by said public utilities board; but such board shall not be required to present any such recommendation or estimate for any such improvement in any case where the money for the same has already been provided, either from the earnings of the public utilities and improvements of such city or otherwise. ('17 c. 358 § 8)

[1778—]24. **Same—Rules of commission—**The commission shall, immediately after its election, and from time to time thereafter, make, amend and alter, rules to promote efficiency in the city service and to carry out the purposes of this act. All rules so adopted shall be published once in the official newspaper of the city and shall take effect three days after such publication. The public utilities board, city manager, or other appointing authority, shall be governed by such rules in the appointment and discharge of all subordinate officers and employes. Immediately after the adoption of any such rule, or any amendment or alteration thereof, the commission shall cause to be delivered to the mayor and the city clerk or recorder copies thereof. ('17 c. 358 § 9)

[1778—]25. **Same—Removing and discharging employes—**Nothing in this act contained shall in any manner prohibit the mayor, the city council, or any other board or officer having the power to appoint or employ any city employee not under the control of the public utilities board or civil service commission, from removing or discharging such subordinate employee, but in case of any such removal or discharge the same shall be forthwith reported in writing, together with the cause thereof, to the civil service commission and the city clerk or recorder. ('17 c. 358 § 10)

[1778—]26. **Same — Commission — Rules — Records —** The civil service commission shall ascertain the duties of each office, position and employment under the management and control of the public utilities board, and shall designate by rule as well as may be practicable the grade of each office, employment or position; and shall prescribe standards of efficiency for each grade. The commission may by rule recommend the maximum and minimum to be paid for each office and employment, and for each grade and the title thereof, annually, or more frequently if deemed necessary. The commission shall make and keep a record of relative efficiency of each employee in the service under its jurisdiction other than unskilled laborers and shall provide by rule methods for ascertaining and verifying the facts from which such records of relative efficiency shall be made. ('17 c. 358 § 11)

[1778—]27. **Same—Powers of commission—Investigations—Witnesses—** The commission shall from time to time investigate the enforcement of this act and of the rules made under it; the duties of all departments and of all employees of the city; the efficiency of the service, and such other matters as come within the scope of this act. In the course of such investigations each commissioner shall have power to issue subpoenas, to administer oaths, and to compel the attendance and testimony of witnesses and the production of books and papers relevant to the investigation. Any person who shall on any such hearing or investigation willfully testify falsely shall be guilty of perjury, and any person who shall refuse to obey the lawful subpoenas or directions of the commission in any such investigation shall be guilty of a misdemeanor. The commission may make complaint to the district court of disobedience of its subpoenas or orders under this section, and the court shall prescribe the notice to be given to the person accused and require him to obey the commission's subpoena or order, if found within the lawful powers of the commission, and punish disobedience as contempt of the court. Witnesses shall be entitled to the same fees and mileage as for attendance upon the district court, except that any officer, agent or employee of the city who receives compensation for his services shall not be entitled to fees or mileage. ('17 c. 358 § 12)

[1778—]28. **Same—Findings, recommendations and orders—**It shall be the duty of the commission, on the completion of any such investigation as provided for in the foregoing section, to make written findings of facts and recommendations or orders with reference to the matters so investigated;

and copies thereof shall be forthwith delivered to the city manager, mayor, and city recorder or clerk, by each of whom the same shall be kept open to public inspection, and the same may also be published in the official newspaper of said city by the commission. All recommendations and orders so made by the commission shall be carried out by the proper officers and employees under the jurisdiction of the commission, and a failure so to do shall be cause for removal or discharge of the offending officer or employee by the commission; but no such removal or discharge shall be made without reasonable notice to and an opportunity to be heard by the accused official or employee. ('17 c. 358 § 13)

[1778—]29. **Same—Submission of act to voters**—This act shall not be in force in any city until the question of its adoption in such city shall first have been submitted to the electors at a general election or at a special election called for that purpose, and it is approved by a majority of those voting on that question at such election. The common council of any such city on its own motion may, and on petition of a number of electors of said city equal to twenty per cent of those voting at the last preceding election shall, by ordinance or resolution, direct that the question of the adoption of this act by such city be submitted to a vote of the electors of such city at a general city election, or special city election called for that purpose to be held in such city on a day specified, not less than ten days nor more than thirty days after the last publication of such ordinance or resolution. The signatures to such petition need not be all appended to one paper, but one of the signers on each such paper shall make oath, before any officer competent to administer oaths, that each signature to the paper appended is the signature of the person whose name purports to be thereto subscribed and that all the subscribers thereto are legal voters of said city. Such petition shall be filed with the city recorder or clerk, and it shall be his duty then to forthwith give written notice to the mayor and each alderman of said city, by mail, of the filing of such petition, and in such notice to fix a time and place, not less than three nor more than ten days thereafter, for the common council to meet and act on such petition. Such ordinance or resolution shall be published and posted, as soon after its adoption as conveniently may be, in manner now provided, or as may be hereafter provided, by law for such cities. ('17 c. 358 § 14)

[1783—]1. **Certain city warrants legalized**—That all warrants drawn and issued by any city in this state having less than ten thousand inhabitants upon any fund, between November 1st, 1913, and the 10th day of March, 1915, be and the same are hereby legalized and declared valid. Provided that the provisions of this act shall not apply to any action or proceeding now pending in any of the courts of this state. ('15 c. 323 § 1)

PROVISIONS RELATING TO CITIES, VILLAGES, BOROUGHES AND TOWNS

1784. **Eminent domain**—All cities and villages may exercise the right of eminent domain for the purpose of acquiring private property within or without the corporate limits thereof for any purpose for which it is authorized by law to take or hold the same by purchase or gift and may exercise the right of eminent domain for the purpose of acquiring a right of way for sewerage or drainage purposes and an outlet for sewage or drainage within or without the corporate limits thereof. The procedure in the event of condemnation shall be that prescribed by chapter 41, General Laws of the state of Minnesota for the year 1913, or that prescribed by the charter of such village or city. (Amended '17 c. 424 § 1)

Municipal corporations have no inherent power of eminent domain, and can exercise such power only on express or implied legislative grant (124-271, 144+960). Eminent Domain, 6-9.

1785. Gifts to municipalities—

Under this section a city had the power to take a conveyance of land from a pauper, and where it agreed to support the grantor during his lifetime, and has fully performed, the con-

veyance cannot be assailed, whether or not the contract could have been enforced against the city (134-348, 150+883). Municipal Corporations, ¶224.

1786. Damages—Notice of claim—Limitation—

Constitutionality—This act is not unconstitutional as class legislation (130-41, 153+121, L. R. A. 1915E, 749). Statutes, ¶85(4).

Application in general—R. L. 1905 § 768 applied to an action for injury to private property occasioned by the negligence of the municipality. The rule applied in 97-23, 106+89, was abrogated by the general revision of the statutes in 1905. The act of 1913, though fully covering the subject of notice in actions against municipalities, does not apply to an injury inflicted before the act was passed (129-267, 152+647). Municipal Corporations, ¶741(1).

Refusal to direct a verdict at the close of plaintiff's case is not available error, though plaintiff had failed to prove notice of her injuries to defendant city, where such evidence was in fact received before the case was submitted to the jury (126-491, 148+304). Trial, ¶420.

Home rule charters—This act was intended to prescribe the only rule governing the subject-matter of the act, and supersedes special provisions on the same subject in home rule charters of cities (133-405, 158+616). Municipal Corporations, ¶1001.

In what cases notice required—This act does not apply to an action for damages to real property growing out of the re-establishment of a grade line of a street, and the filling up to such new grade line, and in such case no written notice to the city is required (133-405, 158+616). Municipal Corporations, ¶1001.

When the main purpose of the suit is to enjoin a city or village from maintaining a private nuisance, the notice prescribed need not be served before suit, as the action is not predicated on negligence (132-121, 155+1067, L. R. A. 1916D, 426). Municipal Corporations, ¶846.

Service of notice under this section is a condition precedent to a suit for damages against a city to recover for an illness caused by the use of contaminated water supplied from the waterworks owned and operated by the city (130-41, 153+121, L. R. A. 1915E, 749). Municipal Corporations, ¶845(11).

Where mayor of city had actual notice of injury to city employé written notice of injury was not required under § 8213 to entitle the employé to recover compensation under the Workmen's Compensation Act (131-352, 155+103). Master and Servant, ¶398.

Under this section and § 690 of the St. Paul charter, prior to the enactment of 1913 c. 391, the limitation of one year after injury in which to bring suit did not apply when the claim was based upon a negligent failure of the city to observe a duty imposed upon it by law as an employer (124-257, 144+955). Municipal Corporations, ¶742(3).

Sufficiency of notice—In an action for injuries from diversion of the natural flow of surface water by the negligent construction of street improvements, the preliminary notice held to sufficiently point out the acts complained of, and that there was not a material departure therefrom in the complaint (132-170, 156+287); Municipal Corporations, ¶845(1, 2).

A misstatement of one day in the date given in the notice to the city of the time of the accident is not fatal upon demurrer (130-410, 153+619). Municipal Corporations, ¶812(7).

Notice by parent of injuries to child need not state relative claims to damages of parent and child or make apportionment of damages claimed (129-190, 151+976, L. R. A. 1915D, 1111, Ann. Cas. 1916E, 897). Municipal Corporations, ¶741(2).

Pleading notice—That complaint fails to allege giving of notice does not prevent opening of judgment for defendant for default of plaintiff in filing reply (122-154, 141+1134; 122-154, 142+134). Judgment, ¶145(1).

Waiver of notice—A city may waive the failure of the complaint to allege statutory notice (132-219, 156+284). Municipal Corporations, ¶816(5).

1787. Same—Claims based on relation of master and servant—

Cited (133-405, 158+616).

124-257, 144+955.

1788. Same—Claims for death—Notice—

Cited (133-405, 158+616).

124-257, 144+955.

1789. Same—To what cities and villages applicable—

124-257, 144+955; 133-405, 158+616; note under § 1786.

1797. Roads, bridges and ferries outside city or village—

This section does not place on a city of the fourth class the duty of maintaining and keeping in repair highways beyond its boundaries and leading into it, for the improvement and maintenance of which such city had appropriated money (135-384, 160+1026). Municipal Corporations, ¶759(1).

1798. Annexation of territory to certain cities and villages having 10,000 inhabitants or less—Ordinance—

Cited (127-452, 149+951).

1800. Annexation of territory to certain cities and villages—

This act applies both to existing and to future municipal corporations. The word "present," in the latter part of this section, refers to the village limits as "present" or existing at the time of the institution of the annexation proceedings, and not to the time of the passage of the statute. It is no valid objection to village annexations that territory properly conditioned to be annexed was not included. Territory annexed, like territory originally incorporated, must be so conditioned as properly to be subjected to village government. In the present case, it is held that there is nothing to show by the record that the territory annexed is not within the condition mentioned (127-452, 149+951). Municipal Corporations, §29(4), 33(2).

1801. Same—Petition for election—

De facto public corporations and attack on proceedings for organization (see 132-59, 155+1040). Municipal Corporations, §17, 18; Quo Warranto, §8.

The words "legal voters residing within such territory" mean resident citizens who would have been entitled to vote in the territory proposed to be annexed on the date they signed the petition, and none others; and a petition not signed by persons having such qualification did not confer jurisdiction on the council (132-48, 155+1064). Municipal Corporations, §33(5).

1803. Same—Election, how conducted—Ballots—

An election under this section held not invalidated by alleged fraudulent colonization of voters (127-452, 149+951). Municipal Corporations, §34.

[1804—]1. **Annexation of territory to cities, villages and boroughs—Ordinance—**That the council of any incorporated city of the fourth class, village or borough, owning property situated outside of but contiguous to or abutting on the corporated limits of such city, village or borough, may, by ordinance, declare such property to be a part of the said city, village or borough, and such territory shall thereupon become a part of such city, village or borough, as effectually as if it had been originally a part thereof. ('15 c. 240 § 1)

[1804—]2. **Same—Certified copy of ordinance to be filed—**It shall be the duty of the council of any city, village or borough, adding territory under this act, to cause a certified copy of the ordinance aforesaid to be recorded and filed in the office of the register of deeds of the county in which said city, village or borough is located, in the same manner as city or village charters are filed and recorded under the general laws of this state. ('15 c. 240 § 2)

1819. Extending water pipes on streets, etc.—

Cited (127-452, 149+951).

[1819—]1. **Sale, lease or abandonment of water works and lighting plants in villages and cities—Submission to voters—**Any village or city of the fourth class in this state wherein there is constructed and in operation water works and lighting plant or water works or lighting plant for supplying water and light, or either of them, for public purposes or for the private use of its inhabitants or both, owned by any such city or village, may by resolution or ordinance of its governing body, passed and adopted in the usual manner, sell, lease or abandon any such plant or any specific part thereof; if a specific part of such plant is to be sold, leased or abandoned, such resolution shall state the specific part to be so sold, leased or abandoned. Before any such resolution or ordinance shall become effective, the same shall be submitted to the legal voters of such village or city at a regular village or city election or special election therein and approved by a two-thirds vote of the electors voting thereon at any such election. The ballots at any such election shall be printed and contain in full the resolution or ordinance to be voted upon and thereon immediately following the resolution or ordinance, there shall be printed in appropriate manner the words "yes" and "no" on separate lines and every voter desiring to vote in favor of such proposition shall thereupon make his cross (X) mark opposite the word "yes" and every voter desiring to vote against such proposition shall make such mark opposite the word "no." In case of villages such election shall be conducted and the votes cast thereat shall be canvassed and the result thereof certified in like manner as in case of an election for village officers, and in case of cities of the fourth class, such election shall be conducted and the votes cast thereat shall be canvassed and the result thereof certified in like manner as in case of an election for city

officers in the respective cities of the fourth class according to the law or charter governing such city. ('17 c. 172 § 1)

Section 4 repeals 1915 c. 79.

[1819—]2. **Same—Duty of officers**—Thereupon if any such proposition shall be declared adopted and carried at any such election, the proper officers of any such village or city of the fourth class shall forthwith proceed to carry out the same according to such resolution. ('17 c. 172 § 2)

[1819—]3. **Same—Application to what cities**—This act shall apply to all villages in this state and to all cities of the fourth class however organized and whether operating under general or special laws or home rule charters, or otherwise. ('17 c. 172 § 3)

[1831—]1. **Sewer systems in cities, villages and boroughs**—In any city of this state having a population of ten thousand (10,000) or less, and in all villages and boroughs of this state, whether organized under the General Laws or a special law, the city, village or borough council shall have power to maintain and extend any existing sewer system, to relay, alter or extend any existing sewer system and to establish and maintain a general system of sewers, and to create sewer districts, and change, diminish or enlarge the boundaries thereof from time to time. ('15 c. 35 § 2)

Section 1 provides that 1903 c. 312, as amended by 1907 c. 141, 1909 c. 364, 1909 c. 385, and 1913 c. 396, be amended so as to read as set forth in sections herein designated as [1831—]1 to [1831—]26, inclusive.

Section 28 repeals "all acts and parts of acts inconsistent with this act, except as qualified in section 27 [1831—26] hereof."

[1831—]2. **Same—Classification of sewers**—The city, village or borough council may at any time establish a general sewer system, and may classify sewers as general, district, joint-district and lateral. General sewers shall be the designation of such large sewers as shall be common to the entire city, village or borough or used as outlets for district or joint-district sewers, and shall not include those which may or shall be constructed for the immediate draining of any particular district. District sewers shall be the designation of all main sewers laid for the immediate draining of a particular sewer district. Joint district sewers shall be the designation of such large sewers as may be laid through or be used jointly by two or more sewer districts between a district sewer and a general sewer or independently of general sewers, and for all purposes of construction, maintenance, repairing and taxation or providing for the cost therefor, shall be treated as though in a single district. Lateral sewers shall be the designation of all sewers of whatever size, capacity or length, which may be constructed to drain any portion of a sewer district directly into any district, joint district or general sewer. Sewer districts shall be wherever practicable laid out to include any particular portion of the city, village or borough, which may be drained entirely by itself, or which may be first drained by itself and then through connection with a general sewer. ('15 c. 35 § 3)

[1831—]3. **Same—Location of sewers—Land, how acquired**—All general, district and joint-district sewers shall be laid when practicable, in public grounds, streets or alleys. Whenever it shall be necessary in the judgment of the city, village or borough council to lay and maintain any general, district, joint district, or lateral sewer in or through other than public lands, the city, village or borough, may acquire the right thereto by purchase, or by condemnation under the right of eminent domain. ('15 c. 35 § 4)

[1831—]4. **Same—Duties and powers of council and engineer, etc.**—No action shall be taken for the extension of any existing sewer nor for the construction of an entire or partial system, except upon the adoption of an ordinance or resolution by a majority vote of all the members of the city, village or borough council. The creation of sewer districts and the alteration of the boundaries thereof shall be by ordinance, and the council may at all times cause inspections, surveys, plans and profiles to be made by the city, village or borough engineer, or other competent engineer to be selected by

the city, village or borough council, and reported to the city, village or borough council for its guidance in determining the form and extent of any sewer district to be created, enlarged or diminished; and such sewer districts shall be consecutively numbered. ('15 c. 35 § 5)

[1831—]5. **Same—Cost, how paid**—The cost of constructing a general sewer shall be paid out of the sewer fund, if any, or, if there is no sufficient sewer fund, then out of the general revenue fund of the city, village or borough. ('15 c. 35 § 6)

[1831—]6. **Same—District sewers—Assessment**—The cost of constructing every district sewer may be assessed against all the land in the sewer district subject to assessment for local improvements, without regard to cash valuation, and each lot, piece or parcel of land in the district so subjected to assessment shall be assessed in the ratio of the square feet area to the total assessable area of the whole sewer district. ('15 c. 35 § 7)

[1831—]7. **Same—Joint district sewers—Assessment**—The cost of constructing every joint district sewer may be assessed against all the land in the two or more sewer districts which it drains, and for that purpose all of the districts so drained by any joint district sewer shall be treated as one district, and the same plan, method and means employed as in assessing for the cost of a district sewer. ('15 c. 35 § 8)

[1831—]8. **Same—Lateral sewers—Assessment**—The entire cost of constructing all lateral sewers may be assessed against every lot, piece or parcel of land abutting thereon, subject to assessment for local improvement at an equal sum per front foot without regard to cash valuation. ('15 c. 35 § 9)

[1831—]9. **Same—Estimate of cost—Plans and specifications**—Whenever the city, village or borough council shall determine by ordinance or resolution to alter, repair, relay or extend any existing sewer, or to construct any new sewer, the cost thereof shall be estimated by the city, village or borough engineer or some other competent engineer to be selected by the city, village or borough council, who shall draw plans and specifications and tabulate the results of his estimate of the cost, and report the same to the city, village or borough council; and such plans and specifications shall be filed with the clerk or recorder of such city, village or borough before any proposals for bids for work thereunder shall be advertised, and shall remain on file, open to the inspection of all persons until after the contract for such work shall be let and copies of such plans and specifications shall be furnished by the engineer who shall prepare the originals, to any person applying therefor, at a cost of seventy-five cents per hour for the time necessarily employed in making such copies. ('15 c. 35 § 10)

[1831—]10. **Same—Proposals for bids—Contract, how let, etc.**—The city, village or borough council shall then cause proposals for bids for such work to be advertised in the official paper of the city, village or borough, and in a newspaper at the capital of the state, at least once in each week for three successive weeks, which advertisement shall specify the work to be done and shall call for bids upon a basis of cash payment for the work, and shall state the time within which bids will be received and the exact time at which the same will be opened for consideration by the city, village or borough council. No bid shall be considered unless the same shall be accompanied by a cash deposit or duly certified check payable to the order of the treasurer of the city, village or borough for at least fifteen per cent of the amount bid, and be directed to the clerk or recorder of the city, village or borough, securely sealed, so as to prevent its being opened without detection, and be indorsed upon the outside wrapper with a brief statement or summary as to the work for which the bid is made. In letting contracts for any such work it shall be the duty of the city, village or borough council to require the execution of a written contract and a bond in such sum as the city, village or borough council may require, conditioned for the faithful performance of the contract and for saving the city, village or borough harmless from any and all liability in the prosecution and completing of the

work. The city, village or borough council, if a contract is awarded, shall award the same to the lowest responsible bidder. If any bidder to whom such contract is awarded shall fail to enter promptly into such written contract and to furnish such bond, then such defaulting bidder shall forfeit to the city, village or borough the amount of his cash deposit or certified check, and the city, village or borough council may thereupon award the contract to the next lowest responsible bidder; provided the city, village or borough council shall have the right to reject all bids, and provided further, that whenever the estimates made for the city, village or borough council for the entire work projected shall be less than five hundred dollars, then the city, village or borough council, may directly purchase the materials therefor and cause the work to be done by day labor. Every contract awarded under this act shall be made between the city, village or borough as one party, in the name of the city, village or borough, and the successful bidder as the other party, and such contract shall be executed on the part of the city, village or borough by the mayor or executive officer thereof and countersigned by the clerk or recorder of said city, village or borough, with the corporate seal of the city, village or borough affixed, and an attested copy thereof shall be filed and remain in the office of the clerk or recorder of the city, village or borough.

In every contract executed under this act, whether or not so stated therein, there shall be reserved the right of the city, village or borough council to have the work supervised by the city, village or borough engineer or other person, and in case of improper construction or unreasonable delay in the prosecution of the work by the contractor, to order and cause suspension of the work at any time and to relet the contract therefor or to order a reconstruction of any portion of the work improperly done, or where the remaining work to be done or the work of reconstruction to be made shall call for an expenditure of less than five hundred dollars to complete the work or reconstruction by the employment of day labor. ('15 c. 35 § 11)

Laws 1903 c. 312 § 7 cited—City may abandon acceptance of bid; but an accepted bid is binding, though insufficient deposit was made (121-212, 141+168). *Municipal Corporations*, § 333, 334.

[1831—]11. **Same—Allowances on account**—In case the contractor to whom any such contract may be let shall properly perform the work therein designated, the city, village or borough council may, from time to time, before the completion of the work, in its discretion, pay to such contractor eighty (80) per cent of the amount already earned thereunder upon the estimate of the city, village or borough engineer or other competent engineer selected by the city, village or borough council. ('15 c. 35 § 12)

[1831—]12. **Same—Duty of engineer—Assessments—Cost, when payable from revenue fund—Right of private owners to relay or extend—Approval by council—Notice—Objections—Interest—Assessment, when lien—Certified statement—Collection—Payment, etc.**—Whenever any work or improvement provided for by this act shall have been determined upon and a contract let therefor, the city, village or borough engineer, or other competent engineer selected by the city, village or borough council, shall forthwith calculate the proper amount to be specially assessed for such district, joint district and lateral sewers against every assessable lot, piece or parcel of land within the sewer district affected, without regard to cash valuation, in accordance with the provisions of sections seven, eight and nine of this act.

Provided, that no property shall be especially assessed for the cost of a sewer in excess of the cost of a sewer eighteen inches in diameter, and that whenever any district, joint district or lateral sewer of larger diameter than eighteen (18) inches shall be laid, or relaid, the cost thereof in excess of the estimated cost of a like sewer eighteen (18) inches in diameter shall be paid out of the sewer fund, if any, or in case there is no sufficient sewer fund, then out of the general revenue fund of the city, village or borough.

Provided further, that in calculating the special assessment for any district sewer or joint district sewer, the cost of laying or relaying such sewer

in any public ground, street or alley; and all catch basins, manholes, lamp holes and flushing valves and tanks shall be taken as a part of such district sewer or joint district sewer and to be paid for by such special assessment.

And provided further, that private owners may lay, relay or extend any lateral sewer through any public ground, street or alley and connect the same with any general, district or joint district sewer, upon permission granted by a majority of the city, village or borough council, and that any private owner alone, or two or more owners jointly, may lay, relay or extend lateral sewers through private ground pursuant to rights acquired therefor by agreement or purchase from any private owner or owners. In the event that any private owner alone or jointly with others lay, relay or extend any such lateral sewer through public ground, the city, village or borough shall not be or become in any manner or in any respect liable for any act or negligence involved therein.

When such engineer shall have finished his calculation of the amount to be specially assessed, as aforesaid, against each lot, piece or parcel of land in the sewer district affected, he shall at once prepare and file with the clerk or recorder of the city, village or borough tabulated statements in duplicate, showing the proper description of each and every lot, piece or parcel of land to be specially assessed and the amount he has calculated against the same, and such statement shall be the basis of the assessment and be known as the proposed assessment to be made by the city, village or borough council, as hereinafter prescribed, and shall be laid before the city, village or borough council for its approval at its next regular meeting, to be held not less than ten (10) days thereafter. The clerk or recorder of the city, village or borough shall thereupon cause notice of the time and place when and where the city, village or borough council will meet in regular session, to pass upon such proposed amendment, to be published in the official paper of the city, village or borough at least ten (10) days prior to such meeting of the city, village or borough council.

During all the time between the filing of such proposed assessment with the clerk or recorder of the city, village or borough and such meeting of the city, village or borough council, such proposed assessment shall be open to inspection and copying by all persons interested.

At such meeting of the city, village or borough council, all persons aggrieved by such proposed assessment may appear before the city, village or borough council and present their reasons why such proposed assessment or any particular item thereof should not be adopted, and the city, village or borough council shall hear and pass upon all objections thereto, if any, and may alter, or affirm and adopt such proposed assessment as shall be deemed just in the premises, and upon the adoption by resolution of such proposed assessment the same shall be certified by the clerk or recorder of the city, village or borough and filed in his office, and shall thereupon be and constitute the special assessment. The amounts assessed against each lot, piece or parcel of land by such special assessment shall bear interest from the date of the adoption of such special assessment until the same have been paid, the rate of interest to be designated by a resolution of the city, village or borough council at the time of the adoption of such special assessment but not to exceed six per cent (6%) per annum, and such special assessment, with the accruing interest thereon, shall be a paramount lien upon the property included therein from the time of the adoption of such assessment by the city, village or borough council, and shall remain such lien until fully paid, and shall have precedence over all other liens, except general taxes, and as to such shall be concurrent, and shall not be divested or impaired by any judicial sale, and no mistake in the description of the property or in the name of the owner shall invalidate the lien.

The city, village or borough council, may at any time by resolution direct the clerk or recorder of the city, village or borough to make up and file in the office of the County Auditor a certified statement of the amount of all such unpaid assessments and the amount of interest which will be due thereon on the first day of January of the following year, and the clerk or recorder of said

city, village or borough shall within twenty (20) days thereafter make up and file such certified statement in the office of the auditor of the county, which statement shall also contain a description of the lands affected by the assessment. Such resolution may also direct that such special assessment shall be payable in equal annual installments, not exceeding ten, and payable on the first day of January of each year, each of said installments to bear interest at the rate hereinbefore provided until fully paid, and the certified statement of the clerk or recorder shall in this case show the amount of each of such installments, the date when each installment becomes due and the amount of interest to be paid on each installment in each year. After said statement is filed in the office of the County Auditor it shall be the duty of such auditor to extend upon the tax roll of each year the amount of such assessment or installment thereof, as the case may be, and the amount of interest which will become due on the first day of January of the following year as shown by said certified statement against the different lots or parcels of land therein described, and such amounts when so extended each year shall be carried into the tax becoming due or payable in January of the following year, and enforced and collected in the manner provided for the enforcement and collection of state and county taxes and the assessments and interest paid to the County Treasurer shall be paid over by him to the treasurer of such city, village or borough upon the apportionment of general taxes. Provided that any person may at any time before the transmission of the certified statement of the clerk or recorder of such city, village or borough to the County Auditor pay such special assessment as to any lot, piece or parcel of land affected thereby, together with the interest accrued thereon at the date of such payment, to the city, village or borough treasurer, and receive the proper receipt therefor, and the clerk or recorder of said city, village or borough shall upon the presentation of such receipt from said city, village or borough treasurer cancel upon the special assessment roll the special assessments so paid.

Provided further, that any person may pay any such assessment with accrued interest thereon after the same has been so certified to the County Auditor, provided the tax roll containing such assessment has not in due course been delivered to the county treasurer for collection, and the receipt of such city, village or borough treasurer shall be sufficient authority upon presentation to the county auditor for him to mark such assessment "paid" upon his roll, but after the roll has been delivered to the county treasurer for collection, the said assessment must be paid to him, with the penalties allowed by law. The same penalties and interest shall attach and be collected by the county treasurer on assessment as upon general taxes, which penalties and interest shall belong to the city, village or borough and to be turned over by the county treasurer to the city, village or borough with the assessments. ('15 c. 35 § 13)

[1831—]13. **Same—Supplemental assessments**—In case of omission, errors or mistakes, in making such assessments in respect of the total cost of such improvement, or otherwise, it shall be competent for such city, village or borough council to provide for and make supplemental assessments to correct such omission, errors or mistakes; and such supplemental assessments shall be a lien as in case of the original assessment, drawing interest at the same rate and be payable and enforceable in the same manner as is herein provided with respect to the original assessment. ('15 c. 35 § 14)

[1831—]14. **Same—Sewer funds—Warrants**—All moneys collected on any such special assessments shall constitute a fund for the payment of the cost of the improvement in the district for which such assessment was made, and the same shall be credited to the proper sewer district fund under the designation: "Fund of Sewer District No.," and in anticipation of the collection of such special assessment the city, village or borough may issue warrants on such fund, to be known as "sewer warrants," payable at such times and in such amounts as, in the judgment of the city, village or borough council, the collections of such special assessments will provide for, which warrants shall bear interest at a rate not to exceed six (6) per cent per annum, payable annually, and may have coupons attached representing each

year's interest. Each warrant shall upon its face state for what purpose it is issued and specify the particular fund against which it is drawn, and shall be signed by the mayor or executive officer and countersigned by the clerk or recorder of the city, village or borough, and be in denominations of not less than fifty dollars nor more than five hundred dollars. Such warrants may be used in making payments on contracts for the improvements or may be sold by the city, village or borough for not less than par and the proceeds thereof used in paying for such improvement. It shall be the duty of the city, village or borough treasurer on presentation to pay such warrants and interest coupons, as they mature, out of the proper sewer district fund, and to cancel the same when paid. If any such warrants shall become due, or any interest shall become due on any such warrant, when there are no funds to pay the same, the city, village or borough council is hereby authorized to effect a temporary loan for the payment thereof. ('15 c. 35 § 15)

[1831—]15. **Same—Payment by warrant or interest coupon**—Any matured sewer warrant or interest coupon may be used in payment of any such special assessment on any particular property situate within the district for which such warrant or coupon shall have been issued; and the warrants and coupons so used shall be cancelled and retired by the city, village or borough treasurer. ('15 c. 35 § 16)

[1831—]16. **Same—Conveyance not to be recorded until assessment paid**—No conveyance of any land upon which any such special assessment or portion thereof remains unpaid shall be recorded until all of such special assessment shall have been paid in full, any provision in this act to the contrary notwithstanding. ('15 c. 35 § 17)

[1831—]17. **Same—Records—Letters, Figures, etc.**—In all proceedings and records prepared or used in the making, levy or collection of such special assessments, letters, figures and proper ditto marks may be used to denote lots, pieces and parcels of land, and blocks, sections, townships, ranges and parts thereof and dates. ('15 c. 35 § 18)

[1831—]18. **Same—Errors and omissions**—No error or omission which may be made in any of the proceedings of the city, village or borough council or any officer of such city, village or borough, in refusing to, reporting upon, ordering or otherwise acting, concerning any local improvement provided for in this act, or in making any such special assessment or in levying or collecting the same, shall invalidate such assessment; unless it shall appear that by reason of such error or omission substantial injury has been done to the party claiming to be aggrieved. ('15 c. 35 § 19)

[1831—]19. **Same—Reassessments**—In all cases where any assessment, or any part thereof, as to any lot, lots or parcels of land assessed under any of the provisions of this act, or of any law of any city, village or borough prior to this act, for any cause whatever, whether jurisdictional or otherwise, shall be set aside, or declared void by any court, the city, village or borough council shall, without unnecessary delay, cause a reassessment or new assessment to defray the expenses of such improvement to be made, whether such improvement was made under this act or any laws of any city, village or borough prior to this act, and such reassessment or new assessment shall be made as nearly as may be, as herein provided for making the assessment therefor in the first instance; and when the same shall have been made and confirmed by the city, village or borough council, it shall be enforced and collected in the same manner that other assessments are enforced and collected under this act and in all cases where judgments shall hereafter be refused or denied by any court for the collection and enforcement of any special assessment, or where any court shall hereafter set aside or declare void any assessment upon any lot or parcel of land for any cause, the said lot or parcel may be reassessed or newly assessed from time to time, until each separate piece or parcel of land has paid its proportionate part of the costs and expenses of said improvement as near as may be. ('15 c. 35 § 20)

[1831—]20. **Same—Prior assessments**—Nothing in this act shall affect any valid assessment made by any city, village or borough prior to the pas-

sage of this act, but all such prior assessments shall be collected in accordance with the provisions of law in respect of the same in force prior to the passage of this act. ('15 c. 35 § 21)

[1831—]21. Same—Notice of meeting—Objections—The notice of the time and place when and where the city, village or borough council will meet in regular session to adopt any proposed assessment under section 13 of this act [1831—12], and to be prepared by the clerk or recorder of such city, village or borough and published, shall specify the particular sewer district or districts in which the improvement is to be made and shall describe with all reasonable certainty the location, extent and termini of the sewer or sewers to be laid, relaid or extended; provided that no omission or inaccuracy in such notice shall invalidate the notice or the assessment, unless substantial injury shall be shown by the person claiming to be aggrieved thereby.

When the city, village or borough council shall meet for the purpose of adopting any proposed assessment under the provisions of section XIII of this act [1831—12], no grievance or objection thereto, or to any item therein shall be heard by the city, village or borough council, unless the party objecting, or his duly authorized agent or attorney shall on or before the date of such session of the city, village or borough council file with the clerk or recorder of such city, village or borough for presentation to the city, village or borough council, a complete written statement of the objection with specific reference to the matter or items called in question and to which objection is made. ('15 c. 35 § 22)

[1831—]22. Same—Appeals from assessment—Any person feeling himself aggrieved by such special assessment may, by notice in writing served upon the mayor or executive officer, and also upon the clerk or recorder of the city, village or borough, a copy whereof, with proof of service shall be filed in the office of the clerk of the district court of the proper county, within twenty days after the adoption of such special assessment, appeal from such special assessment to the district court aforesaid, and such appeal shall be disposed of in a summary manner by the court. And at the trial of such appeal no pleadings shall be required, but the party appealing shall in his notice of appeal specify and enumerate the particular grounds of his objection to such special assessment, and shall not be entitled to have considered on such appeal any grounds of objections or items other than those specified in such notice, and no question shall be tried on such appeal as to any fact which may have arisen or existed prior to the letting of the contract or contracts for the improvement; and a copy of the assessment roll in question and of the resolution of the city, village or borough council confirming or adopting the same, certified by the clerk or recorder of the city, village or borough, or the originals thereof, shall be prima facie evidence of the facts therein stated or denoted, and that such assessment was regular, just and made in conformity to law, and the judgment of the court on the determination of such appeal shall be final. Such appeal shall be entered and brought on for hearing and be governed by the same rules as far as applicable as in appeals from justices of the peace in civil actions, and like bonds shall be given to the city, village or borough by the person appealing as are required in the appeals from justices of the peace in civil actions, but such bond shall, to render such appeal effective, be approved by the judge of such district court. Provided, that no appeal to the district court shall be made, heard or determined as to such special assessment, or any item therein, unless such objection shall have been, as in this act specified, previously presented to and passed upon by the city, village or borough council. ('15 c. 35 § 23)

[1831—]23. Same—Sewer to be kept in repair—Whenever any such sewer shall be laid, relaid or extended, it shall be the duty of the city, village or borough council to maintain and keep the same in repair, at the expense of the city, village or borough. ('15 c. 35 § 24)

[1831—]24. Same—Private connections—All private connections shall be made with lateral sewers, unless some insurmountable obstacle of a practical or scientific nature shall prevent, and no private connection with any sewer

whatever shall in any event be made without formal permission therefor granted by the city, village or borough council, and the making of all private connections with any sewer shall be subject to supervision and control by the city, village or borough council; provided that such supervision and control may be delegated by the city, village or borough council to the city, village or borough engineer or other person to be selected by the city, village or borough council at its discretion. ('15 c. 35 § 25)

[1831—]25. **Same—Eminent domain**—Whenever it shall become necessary for the city, village or borough to exercise the right of eminent domain for the purposes included within this act all proceedings therein shall conform as near as may be to the provisions of Sections 2620 to 2632, both inclusive of the General Statutes of 1894 and amendments thereto. ('15 c. 35 § 26)

[1831—]26. **Same—Home rule charters**—This act shall not be construed as in any manner superseding, repealing, amending or qualifying the provisions of any home rule charter heretofore or hereafter adopted by any city or village under existing laws; provided that any proceedings taken or commenced by any city or village under the provisions of this act before the time when such home rule charter shall take effect may be carried out and completed according to the terms and provisions of this act. ('15 c. 35 § 27)

[1831—]27. **Certain proceedings for constructing sewers, etc., legalized**—That whenever and in all cases between the first day of January 1916 and the first day of January 1917 the city council of any city in the State of Minnesota of less than ten thousand inhabitants incorporated and organized under the provisions of chapter 8 of the General Laws of Minnesota for 1895, has proceeded to establish one or more sewer districts and to construct therein a system of public sewers under the provisions of chapter 35 of the General Laws for 1915 [1831—1 to 1831—26] and where such city council has let contracts for the construction of such sewers and has levied special assessments against the property in the sewer district created to pay the cost of construction of such sewer, but where the proposal for bids for construction of such sewers was not advertised in a newspaper at the Capitol of the State of Minnesota as provided by section 11 of chapter 35 of the General Laws of Minnesota for 1915 [1831—12], all steps taken, things done, and acts and proceedings had, done and performed by such city council in the letting of such contract for construction of such sewers and levying of such special taxes or assessments upon property within the sewer district benefited thereby and all warrants, certificates of indebtedness and bonds issued or authorized to be issued by such city council for the procuring of money to pay for such construction and lawful expenses in connection therewith are hereby legalized, validated, ratified and confirmed and all such warrants, certificates of indebtedness or bonds issued or to be issued by such city council in said proceedings are hereby legalized, ratified, and confirmed and made the legal, valid and binding obligations of such city. Provided, that the provisions of this act shall not apply to any other action or proceedings now pending in any of the courts of this State. ('17 c. 126 § 1)

[1831—]28. **Macadam or pavement, gutter and curbs in villages having 10,000 inhabitants**—In any village of this state, whether organized under a general or special law, now or hereafter having a population of ten thousand (10,000), or less, the common council shall have power to lay and maintain macadam or pavement and gutter and curbs, upon any of its streets and alleys, with any material which the common council may deem suitable, the council may, upon a petition of the owners of more than one-half the property affected, proceed with such improvement. ('17 c. 364 § 1)

[1831—]29. **Same—Cost, how assessed—Payment from general fund**—The costs of constructing any macadam, pavement, gutter or curb may be assessed upon the abutting property based upon the number of feet fronting upon said street or alley proposed to be paved or upon the basis of benefits; but the common council may pay the cost of constructing the macadam or pavement across intersecting streets and alleys, and one-half the costs oppo-

site any public park or municipal property, and the entire costs of the gutters out of the general road fund, if any there be, or out of the general fund of said village. ('17 c. 364 § 2)

[1831—]30. Same—An ordinance by council, etc.—No action shall be taken for the construction of any such improvement except upon the adoption of an ordinance or resolution by a majority vote of all members of the common council, at a meeting at which all property owners whose property is liable to be assessed therefor, have been notified to be present, by a notice of such meeting published for two weeks in the official newspaper. ('17 c. 364 § 3)

[1831—]31. Same—Owners when required to lay branch sewers and water pipes—Before making any such improvement the common council may by resolution require the owners of the abutting property to lay branch sewers and water pipes from the mains to the curb or lot line of each lot, and in case any property owner neglects to lay such sewer or water pipe, within sixty days (60) after being served with a copy of said resolution, the council may cause the same to be put in and may assess the cost of the same against the property and collect the same as taxes are collected. All such water pipe connections shall be of lead or such material as the council may prescribe. ('17 c. 364 § 4)

[1831—]32. Same—Plans and specifications—Contracts how let—Powers of council—Whenever the common council of any such municipality shall determine by ordinance or resolution to lay any such macadam, pavement, gutter or curb it may cause plans and specifications thereof to be made and filed with the recorder or clerk of such municipality and may advertise for bids for such improvements in the official paper and such other paper or papers as the council may deem advisable, once in each week for three successive weeks, which advertisement shall specify the work to be done and shall call for such bids on the basis of cash payment for such work and shall state the time when the bids will be open and considered by the council; no bids shall be considered unless sealed and filed with the clerk or recorder, and accompanied by a cash deposit or certified check payable to the clerk or recorder, for at least ten per cent (10%) of the amount of such bid.

In letting contracts for any such work, it shall be the duty of the common council to require the execution of a written contract and a bond in such sum as the council may require, conditioned for the faithful performance of the contract and for saving the village harmless from any and all liability in the prosecution and completing of the work; and conditioned further for the payment of all material used and labor performed thereon. The common council, if a contract is awarded, may award the same to the lowest responsible bidder. If any bidder to whom such contract is awarded shall fail to enter promptly into such written contract and to furnish such bond, then such defaulting bidder shall forfeit to the municipality the amount of his cash deposit or certified check, and the council may thereupon award the contract to the next lowest responsible bidder; provided the council shall have the right to reject all bids; and provided, further, that whenever the estimates made for the council for the entire work projected shall be less than five hundred dollars, then the council may directly purchase the materials therefor and cause the work to be done by day labor. The village council may have the work supervised by the village engineer or other person, and in case of improper construction or unreasonable delay in the prosecution of the work by a contractor, it may order and cause the suspension of the work at any time and relet the contract therefor, or order a reconstruction of any portion of the work improperly done, and where the work to be done shall call for an expenditure of less than five hundred dollars to complete the work, or the reconstruction necessary, the council may do it by the employment of day labor. ('17 c. 364 § 5)

[1831—]33. Same—Payments on account—In case the contractor shall properly perform the work, the village council may, from time to time, before the completion of the work, in its discretion, pay to such contractor seventy-

five (75) per cent of the amount already earned thereunder upon the estimate of the city engineer or other competent person selected by the village council. ('17 c. 364 § 6)

[1831—]34. **Same—Amount of assessment how calculated—Notice of meeting—Lien of assessment—Tax list, etc.**—After a contract is let, or the work ordered done, if it will cost less than five hundred dollars, the city engineer or other person selected by the council may forthwith calculate the proper amount to be specially assessed for such improvement against every assessable lot, piece or parcel of land within the district affected, without regard to cash valuation, in accordance with the provisions of section 2 of this act [1831—28]. The clerk or recorder may thereupon cause notice of the time and place when and where the village council will meet, to pass upon such proposed assessment, to be published in the official paper of the village at least one week prior to such meeting of the village council.

At such meeting the council shall hear and pass upon all objections thereto, if any, and may if it deems just, alter such proposed assessment, and upon the adoption by resolution of such assessment, the same shall constitute the special assessment. And such assessment, with the accruing interest thereon, shall be a lien upon the property included therein, concurrent with general taxes.

It shall then be the duty of the clerk or the recorder immediately thereafter, to transmit a certified duplicate of such assessment to the county auditor of the county, to be extended on the proper tax lists of the county and such assessment shall be collected and paid over in the same manner as other municipal taxes. Such assessments shall be payable in equal annual installments extending over a period not exceeding ten years, and the interest thereon shall not exceed the rate of six (6) per centum per annum.

Provided, that the owner of any property, so assessed, may at any time pay the whole of such assessment, or any annual installment thereof with interest, as to any lot, piece or parcel of land affected thereby. ('17 c. 364 § 7)

[1831—]35. **Same—Omission, errors, etc.**—In case of omission, errors, or mistakes, in making such assessment in respect to the total cost of such improvement, or otherwise, it shall be competent for the council to provide for and make supplemental assessments to correct such omission, errors or mistake. ('17 c. 364 § 8)

[1831—]36. **Same—Pavement warrants**—In anticipation of the collections of such special assessment, the village may issue warrants on such fund, to be known as "pavement warrants" payable at such times and in such amounts as the collection of such special assessments will provide for, which warrants shall bear interest at a rate not to exceed six (6) per cent per annum, payable annually, and may have coupons attached representing each year's interest. The warrant shall specify the particular fund against which it is drawn, and shall be signed by the mayor and countersigned by the clerk or recorder, and be in denominations of not less than fifty dollars, nor more than five hundred dollars. Such warrants may be sold by the village for not less than par. If any such warrants shall become due, or any interest shall become due on any such warrant, when there are no funds to pay the same, the village council is hereby authorized to effect a temporary loan for the payment thereof. The municipality may call in and pay any warrants not due on any interest paying date. ('17 c. 364 § 9)

[1831—]37. **Same—Reassessments**—In all cases where any assessment or any part thereof, as to any lot, lots or parcels of land assessed under any of the provisions of this act, for any cause whatever, is set aside, the council may cause a reassessment or new assessment to defray the expenses of such improvement to be made. ('17 c. 364 § 10)

[1831—]38. **Same—Objections**—The party desiring to object to the assessment, or his duly authorized agent or attorney, shall, on or before the date of

hearing upon such assessment, file with the clerk or recorder a written statement of the objections, and all objections not specified therein shall be deemed waived. ('17 c. 364 § 11)

[1831—]39. Same—Appeals—Within ten days after the adoption of the assessment, any person, aggrieved, who appeared and filed objections thereto, may appeal to the district court by serving a notice upon the president of the village council, or other chief executive officer of the village, which notice shall be filed with the clerk of the district court within ten days after service thereof. The clerk or recorder shall furnish appellant a certified copy of his objections filed therein, and the assessment roll or part complained of, and all papers necessary to present the appeal. The appeal shall be placed upon the calendar of the next general term commencing more than five days after the date of serving the notice and shall be tried as other appeals in such cases. If appellant does not prevail upon the appeal, the costs incurred, if not paid, shall be included in the special assessment. ('17 c. 364 § 12)

[1846—]1. Donation of lands by state to St. Paul for municipal forest—Upon the adoption of a resolution by the governing body of the city of St. Paul, in Ramsey county, Minnesota, accepting a donation and conveyance from the state of a portion of the land of the first state fish hatchery of the city of St. Paul, Minnesota, hereinafter set forth, pursuant to the provisions of Chapter 211, Laws of Minnesota for the year 1913 [1846], for a municipal forest in the city of St. Paul, and upon the presentation and delivery of a certified copy of such resolution to the governor of the state, a donation and conveyance of said land shall be made by the state to the city of St. Paul. ('15 c. 108 § 1)

[1846—]2. Same—Deed of conveyance—The deed of conveyance shall be executed by the governor and the state auditor, and attested by the secretary of state. Such instrument of conveyance shall recite that the donation and conveyance is made for use as a municipal forest only, under the provisions of said Chapter 211, Laws of Minnesota for 1913 [1846], and shall further provide that the said premises shall be used by the said city of St. Paul for a municipal forest only, and that in the event the said city of St. Paul shall cease to use the same for such purpose within the spirit and intent of this act, the title to said property shall ipso facto revert to the said State of Minnesota. ('15 c. 108 § 2)

[1846—]3. Same—Land donated—The land and premises hereinbefore referred to, which is to be donated and conveyed by the State of Minnesota to the city of St. Paul, is a part of the lands and premises of the state known as the first state fish hatchery, situated in the city of St. Paul, in Ramsey county, Minnesota, to-wit:

Beginning at the Northwest corner of Section Three (3), Township Twenty-eight (28) North, Range Twenty-two (22) West; thence South along the West line of said Section Three (3), a distance of Three Hundred Four and Eighty-four Hundredths (304.84) feet to a point; thence South Forty-two degrees Twenty-eight minutes (42° 28') East, a distance of Five Hundred Eighty-nine and Forty-five Hundredths (589.45) feet to a point; thence South Seventy-two degrees Forty-eight minutes (72° 48') East a distance of Five Hundred Thirty-two and Thirty-five Hundredths (532.35) feet to a point; thence North Seventy-four Degrees Twenty-six minutes (74° 26') East a distance of Four Hundred Twenty-five and three-tenths (425.3) feet to a point on the North and South quarter-quarter ($\frac{1}{4} \frac{1}{4}$) line; thence North along said quarter-quarter ($\frac{1}{4} \frac{1}{4}$) line a distance of Seven Hundred Seventy-two and Twenty-five Hundredths (772.25) feet to the North line of said Section Three (3); thence West along said North line of Section three (3), a distance of One Thousand, Three Hundred Seventeen and Two Hundredths (1,317.02) feet to place of beginning. Excepting the Point Douglas Road.

Containing Twenty and Fifty-five hundredths (20.55) acres more or less. ('15 c. 108 § 3)

[1846—]4. **Lost or destroyed orders or warrants of counties, cities, townships, villages or school districts—Issue of duplicate**—That whenever any order or warrant of any county, city, township, incorporated village or school district in the State of Minnesota shall become lost or destroyed, a duplicate thereof may be issued by the officers authorized by law to issue such orders or warrants under the regulations and restrictions hereinafter prescribed. ('15 c. 36 § 1)

[1846—]5. **Same—Form of duplicate**—Such duplicate shall correspond in number, date, and amount, with the original order or warrant and shall have endorsed on its face by the officers issuing the same, the word, "duplicate," together with the date of its issuance. ('15 c. 36 § 2)

[1846—]6. **Same—Affidavit of owner—Bond**—A duplicate for a lost or destroyed order or warrant shall not issue until there shall have been filed with the proper officer, an affidavit of the owner thereof setting forth the ownership of such order or warrant, the description thereof, and the manner of its loss and destruction, and until there shall have been executed and filed with the same officer, an indemnifying bond, with sureties to be approved by such officer, in a sum equal to double the amount of such warrant or order, conditioned that the parties thereto shall pay all damages which the county, city, township, incorporated village or school district, as the case may be, may sustain, if compelled to pay such lost or destroyed orders or warrants. ('15 c. 36 § 3)

[1846—]7. **Same—Record to be kept**—Any officer issuing duplicates under this act shall keep a record showing the number, dates and amounts of such mutilated, lost or destroyed orders or warrants, together with the date of issuance of the duplicates therefor, and the names of the persons to whom issued. ('15 c. 36 § 4)

[1846—]8. **Decorating graves of soldiers on Memorial Day in cities, villages and towns—Duty of clerk or recorder**—It shall be the duty of the clerks or recorders of all cities and villages, and the town clerks of all towns, within the State of Minnesota, to ascertain,—as far as it shall be practicable so to do,—if within their respective city, village or town, there are any graves of soldiers of the United States which probably will not be decorated at the next Memorial Day, and if any such grave or graves shall be found, it shall be the duty of such city or village clerk or recorder and of such town clerk, to cause any and all such graves within their respective town, city or village, to be decorated annually, upon Memorial Day by placing thereat an American flag. ('15 c. 280 § 1)

[1846—]9. **Same—Expenses, how paid**—The reasonable value of the service and expense necessary to comply with the foregoing section shall be a charge upon such town, city or village, and the governing body thereof, after due examination shall audit any bill which shall be duly itemized, verified and presented by such town clerk or city or village clerk or recorder, for such service and expense and shall order paid out of the treasury of such respective town, city or village, such bill or portion thereof as shall be found just and reasonable. ('15 c. 280 § 2)

CHAPTER 10

PUBLIC INDEBTEDNESS

1852. Bonds—Form—Execution—Interest—Maturity—

This section does not repeal Sp. Laws 1891, c. 312, § 10, authorizing the board of education of the city of Duluth to issue bonds maturing within a period of not exceeding 30 years (123-514, 144+161). Schools and School Districts, ~~§~~97(1).

[1860—]1. **Sale of bonds at private sale in cities of first class not under home rule charters**—Every city of this state now or hereafter having over fifty thousand inhabitants and not governed under a charter adopted pursuant to Section 36, Article 4 of the State Constitution, in addition to all other modes by law prescribed and authorized therefor, is hereby authorized and empowered and shall at all times hereafter have the power and authority at its option and through its proper officers to issue and sell at private sales, through such agencies and in such manner and at such times and places and with or without published or other notice of such sales as the city council of such city shall determine, all or any part of the municipal bonds of such city the issuance and sale of which have been, now are or shall hereafter be authorized by law. The bonds so sold at private sale shall be in denominations of one hundred dollars or any multiple thereof not exceeding one thousand dollars, and none of such bonds shall be sold at private sale for less than the amount for which they are by law authorized to be sold and accrued interest thereon. All bonds so sold at private sale shall be reported to the city council of the city for confirmation. The additional power and authority hereby conferred upon said cities may be exercised as herein provided notwithstanding the provisions of any law to the contrary heretofore or hereafter enacted. Provided, however, that this act shall not authorize the sale of bonds in the manner herein provided in amounts in excess of ten thousand dollars from any single bond issue to any person or corporation. ('15 c. 204 § 1)

[1860—]2. **Short time loans for current expenses in cities of first class not under home rule charters**—Each city of this state now or hereafter having over fifty thousand inhabitants and not governed under a charter adopted pursuant to Section 36, Article 4, of the state constitution, in addition to all powers now vested in the city, is hereby authorized and empowered, acting through the city council or other chief governing body of the city, to negotiate for and borrow money in such amounts as shall be required by the city or any department of the city for the payment of the current expenses of the city and the several departments and boards thereof and the cost of local improvements, in anticipation and in advance of the collection of unpaid taxes and assessments which have been levied and assessed by the city for such purposes and are due and payable at the time of making such loans, and to execute and deliver proper promissory notes of the city for the amounts of money so borrowed by the city. All such notes shall be signed in behalf of the city by the mayor, city comptroller and city treasurer of the city.

The power to borrow money hereby conferred shall be exercised by the city only upon recommendation of the city treasurer and city comptroller of the city so to do and only when directed by vote of at least two-thirds of the members elect of the city council or other chief governing body of the city. No greater rate of interest shall be paid by the city for the use of any moneys so borrowed by it than 5 per cent. per annum, payable semi-annually. All loans of money obtained by any city pursuant to this act shall be for a period not exceeding six months from the date of such loans respectively and no such promissory note issued by any city under this act shall be made payable more than six months from the date thereof.

All debts incurred by the city for moneys borrowed by the city under this act, and all notes issued by the city as evidence of such debts, and all interest accruing thereon, shall, upon the collection of such unpaid taxes and assess-

ments, be paid from the respective funds of the city for the benefit and on account of which such moneys and notes were respectively borrowed and issued. ('15 c. 221 § 1)

[1860—]3. Transfer to sinking fund of unused balances in cities of first class not under home rule charters—In addition to all other powers by it possessed, the city council of every city of this state now or hereafter having over fifty thousand inhabitants not governed under a charter adopted pursuant to section 36, article 4 of the State Constitution, is hereby authorized and empowered, in its discretion, by resolution duly passed by the city council, to transfer and cause to be transferred to the credit of the sinking fund of such city any or all unused balances of moneys and funds which are the proceeds of bonds heretofore or hereafter issued and sold by the city for any municipal purpose whatever, including bonds issued for public schools, public libraries and public parks and parkways, whenever the improvement or purpose for which the bonds were or shall be issued has been completed or abandoned, and any and all unused balances of moneys and funds now or hereafter existing in the permanent improvement fund and permanent improvement revolving fund of the city, and any or all unused moneys and funds now or hereafter raised by general taxation in such city for any purpose whatever, and to invest and cause to be invested all said moneys and funds in the same manner as the sinking fund of the city is now or may be invested, or in such manner as the city council may in its discretion deem best, and to use and cause to be used said moneys and funds for the payment and redemption of the bonds and other indebtedness and obligations of the city as they mature and become payable. ('17 c. 78 § 1)

[1860—]4. Sinking fund in cities of first class not under home rule charters—Annual tax—In addition to all other powers now by it possessed, the city council of every city in the state of Minnesota now or hereafter having over 50,000 inhabitants and not governed under a charter adopted pursuant to section 36, article 4, of the state constitution, for the purpose of providing a sinking fund and making provision for the payment and redemption of the bonds and other debts and obligations of the city as they mature and become payable, may by resolution adopted by a majority of all the members elect of such city council annually levy a tax upon all the taxable property within the city. Such tax shall not in any one year exceed in amount one-fifth of one per cent of the total assessed valuation of such taxable property, and shall not be less than one-tenth of one per cent of such total assessed valuation, until ample provision has been made for the full payment of all bonds, debts and obligations of the city. Such taxes when levied shall be extended upon the tax books and tax lists of the county in which the city is situated and shall be collected and payment thereof enforced in like manner as other city, county and state taxes are extended upon such tax books and tax lists and are collected and payment thereof enforced. The proceeds of all such taxes shall be applied to and constitute such sinking fund for the payment and redemption of the bonds and other debts and obligations of the city as they become due and payable. ('17 c. 100 § 1)

[1860—]5. Same—Duty of council—Investment—The city council of such city shall provide by ordinance or otherwise for the care, investment and security of the sinking fund hereby authorized, either as is now provided by law in respect to the sinking fund of the city or in such manner as the city council may in its discretion deem best. When not required for immediate use for the payment of the bonds and debts of the city such sinking fund may be invested by the city council or by the sinking fund commissioners of the city, with the consent of the city council, in the bonds of such city, or in such other bonds as the permanent school funds of the state of Minnesota are permitted to be invested in, or in the bonds of any city in the state of Minnesota having a population of five thousand or more, or in such county or school bonds in the state of Minnesota as may be approved by the city council. In case of the investment of such sinking fund or any part thereof in the

bonds of the city the same shall not be cancelled but shall be held as a part of such sinking fund and the interest thereon shall be applied to the increase of such sinking fund. Any bonds in which such sinking fund shall be invested may be sold and disposed of by the direction and with the consent of the city council whenever necessary for the payment therewith of any bonds or indebtedness of the city, or whenever the city council shall deem it to the best interests of the city so to do. ('17 c. 100 § 2)

1882. Same—Where vote of electors is required—Procedure—Submission to voters—Notice of election—

That petition for issuance of bonds by school district contained signatures of two of the members of the board of directors of the district did not invalidate the petition, where, in addition to such names, it contained the names of ten qualified signers (122-59, 141+1105). Schools and School Districts, ~~§~~97(1).

1885. Same—Approval of application—Limit of debt—Duties of state and county auditors—Upon the approval of such application by the attorney general, as to form and execution, and otherwise by said state board of investment, such governing body and the respective officers thereof shall have authority to issue, execute and deliver to the state of Minnesota the bonds of such municipality, in accordance with the vote of said electors, and said state board of investment shall have authority to purchase the same to an amount not exceeding 15 per cent of the assessed valuation of the taxable property of such municipality, according to the last preceding assessment. Such bonds shall not run for a shorter period than five years, nor for a longer period than twenty years. Forthwith upon the delivery to the state of Minnesota of any bonds issued by virtue thereof, the state auditor shall certify to the respective auditors of the various counties wherein are situated the municipalities issuing the same, the number, denomination, amount, rate of interest and date of maturity of each such bond, and each county auditor shall keep a record thereof in his office in a book to be furnished him by the state auditor, at the expense of the state. (Amended '17 c. 270 § 1)

That resolution for issuance of series of bonds provided that first of series should mature in less than five years, did not invalidate the bonds, where subsequent resolution conformed to requirement of constitution in that respect (122-59, 141+1105). Schools and School Districts, ~~§~~97(1).

1888. Same—Validity of bonds not to be questioned, except—Change of boundaries—

That resolution provided that first of series of bonds should mature in less than five years did not invalidate bonds, where subsequent resolution corrected this defect. That petition for election was signed by two of the district school directors held immaterial, where the petition contained ten other signatures of qualified freeholders (122-59, 141+1105). Schools and School Districts, ~~§~~97(4).

[1891—]1. **Certain bonds purchased by state validated—**Whenever the state board of investment shall have heretofore purchased with the funds of the state of Minnesota, the bonds of any municipality in this state, the validity of any such bond shall never be questioned, except on the ground that the same and the loan made thereon was not approved by the state board of investment; that the bond in question made the entire bonded indebtedness exceed fifteen (15) per cent of the assessed valuation of the taxable property of the municipality issuing such bonds; that such bonds bear a lower rate of interest than three (3) per cent; that such bonds run for a shorter period than five years, or for a longer period than twenty years; or that the principal thereof was never paid by the state to, or received by, the officers of the municipality issuing the same; and no change of the boundary lines of any such municipality shall relieve the real property therein at the time of the issuing of such lands from any liability from taxation to pay for the same and all such bonds so purchased are hereby declared to be the valid and subsisting indebtedness of each municipality, respectively issuing the same. ('15 c. 290 § 2)

By section 1 "municipality" is defined as in G. S. 1913 § 1879.

[1891—]2. **Certain bonds purchased by state validated—**Whenever the state board of investment shall have heretofore purchased with the funds of the state of Minnesota, the bonds of any municipality in this state, the validity

of any such bond shall never be questioned, except on the ground that the same and the loan made thereon was not approved by the state board of investment; that the bond in question made the entire bonded indebtedness exceed fifteen (15) per cent of the assessed valuation of the taxable property of the municipality issuing such bonds; that such bonds bear a lower rate of interest than three (3) per cent; that such bonds run for a shorter period than five years, or for a longer period than twenty years; or that the principal thereof was never paid by the state to, or received by the officers of the municipality issuing the same; and no change of the boundary lines of any such municipality shall relieve the real property therein at the time of the issuing of such bonds from any liability from taxation to pay for the same and all such bonds so purchased are hereby declared to be the valid and subsisting indebtedness of each municipality respectively issuing the same. ('17 c. 234 § 2)

By section 1 "municipality" is defined as in G. S. 1913 § 1879.

[1895—]1. **Authorizing bonds at rate of interest in excess of charter limit**—Any city of this state now or hereafter having a population of over fifty thousand inhabitants, and authorized by the terms of its charter to issue and sell the bonds of such city for any purpose, at a rate of interest limited to less than five per cent per annum, is hereby authorized and empowered, notwithstanding any such charter limitations, to issue and sell, to the amount and in the manner and for the purposes provided for in and by its charter, any city bonds authorized by the terms of its charter, bearing a rate of interest in excess of that limited by its charter, but not, however, exceeding a rate of five per cent per annum, payable annually or semi-annually. Provided that the provisions of this act shall not apply to any act of the legislature heretofore passed authorizing the issue and sale of bonds in which the rate of interest is fixed by the act. ('15 c. 53 § 1)

Section 3 repeals inconsistent acts, etc.

[1895—]2. **Same—Applicable to what cities**—This act shall also apply to cities existing under a charter framed pursuant to Section 36, Article 4 of the Constitution. ('15 c. 53 § 2)

POWER OF CITIES OF FIRST CLASS TO ISSUE BONDS FOR CERTAIN PURPOSES

The following acts empowering cities of the first class to issue bonds for certain purposes, or legalizing certain issues, have not been included:

Applicable only to cities not under home rule charters:

1915 c. 12, authorizing cities which have sold bonds under 1913 c. 274 for parks and parkways to use the unexpended portion of the proceeds.

1915 c. 205, authorizing \$100,000 bonds for erecting additions to and improvements of hospitals.

1915 c. 206, authorizing \$310,000 bonds for so much of cost of paving, curbs and gutters and lateral and other sewers as is not assessable upon abutting or benefited property.

1915 c. 207, authorizing \$85,000 bonds for constructing bridges over any navigable stream running through such city.

1915 c. 214, authorizing \$250,000 bonds, for cost of main or trunk line sewers.

1915 c. 220, authorizing \$350,000 bonds for cost of extension, etc., of waterworks system.

1915 c. 232, authorizing \$125,000 bonds for improving parks and parkways.

1915 c. 286, authorizing \$300,000 bonds for graded school buildings and \$375,000 for high school buildings.

1915 c. 289, authorizing \$18,000 bonds for incinerators at crematory plants.

1915 c. 340, authorizing \$100,000 bonds for arching or covering over creek, etc.

1917 c. 93, authorizing \$210,000 bonds for additions to and improvements of hospitals and \$90,000 for additions to and improvements of workhouses and city prisons and additional equipment for hospitals and workhouses.

1917 c. 99, authorizing \$125,000 bonds for improving parks and parkways.

1917 c. 102, authorizing \$35,000 bonds for acquiring lands for municipal baths, etc.

1917 c. 104, authorizing \$100,000 bonds for so much of cost of paving and curbs and gutters as is not assessable on abutting or benefited property and \$500,000 for cost of main line and trunk sewers, and \$125,000 for sites for and constructing and repairing fire station houses, etc.

1917 c. 219, authorizing \$100,000 bonds for improving and acquiring parks, parkways, and playgrounds.

1917 c. 349, authorizing \$100,000 for constructing concrete bridges, and \$200,000 for repairing, etc., steel bridges over navigable streams, etc.

1917 c. 368, authorizing \$100,000 bonds for repairing and enlarging armories.

1917 c. 379, authorizing \$150,000 bonds for caring for flood waters of creeks, etc.

1917 c. 373, authorizing bonds in various amounts for various school purposes aggregating \$4,436,000 and issuable in the years 1918, 1919, 1920, 1921, and 1922.

Applicable only to city under home rule charter:

1917 c. 420, authorizing \$200,000 bonds for constructing and repairing bridges and viaducts.

POWER OF CITIES OF SECOND CLASS TO ISSUE BONDS FOR CERTAIN PURPOSES

The following acts, empowering cities of second class to issue bonds for certain purposes have not been included:

1915 c. 5, authorizing board of park commissioners to issue \$35,000 bonds parks and parkways.

1917 c. 16, authorizing \$150,000 bonds for paving and curbing and storm water sewers.

POWER OF CITIES OF THIRD CLASS TO ISSUE BONDS FOR CERTAIN PURPOSES

The following act has not been included:

1915 c. 58, authorizing \$50,000 bonds for paying for local improvements made or to be made for which no assessments against real estate have been or shall be levied to defray the cost thereof. Not applicable to city under home rule charter.

[1909—]1. **Bonds for city halls, fire houses and city jails**—That any city in the state of Minnesota which, according to the last federal census, had a population of not less than ten thousand people and not more than twenty thousand people, is hereby authorized to issue the bonds of such city for the construction of a city hall, fire house and city jail, in such amounts, payable at such times, and at such rate of interest, and sell the same upon such terms as may be determined by a majority vote of the city council, or other governing body of such city, provided, however, that the aggregate of the face value of the bonds which shall be issued by virtue of the provisions of this act, shall not exceed the sum of one hundred and ten thousand dollars. ('17 c. 258 § 1)

Section 4 repeals inconsistent acts, etc.

[1909—]2. **Same—Submission to voters, etc.**—Before any bonds are issued under the provisions of this act by any such city, there shall be adopted by the council or other governing body of such city, a resolution certifying the purpose for which such bonds are required, the amount thereof necessary to be issued, the rate of interest the same shall bear, and the terms upon which said bonds shall be sold, and thereafter said city council shall submit the question of the issue of said bonds and the sale thereof, pursuant to said resolution, to the legal voters of said city, either at a special election called for that purpose, pursuant to the charter of said city, or at any general election held in said city, and if a majority of the legal voters of said city shall vote in favor of the issuance of said bonds, then the council or other governing body of said city shall have full power and authority to issue and sell the same for the purpose specified in said resolution, and not otherwise, but if a majority of the legal voters of said city should vote not to issue and sell said bonds, then the proposition shall be deemed rejected, and shall not again be submitted to the voters of said city for a period of at least one year from the date of such election. ('17 c. 258 § 2)

[1909—]3. **Same—Conduct of election**—The election at which a vote upon said bonding proposition shall be voted upon shall be conducted as are other special elections in said city, unless the proposition shall be submitted at a general city election, but in either case the proposition shall be plainly submitted upon the city election ballot by the use of appropriate language in conformity with the so-called Australian election ballot law of this state.

Said vote shall be returned and canvassed as at other city elections in said city. ('17 c. 258 § 3)

POWER OF CITIES OF FOURTH CLASS TO ISSUE BONDS FOR CERTAIN PURPOSES

1910. Bonds for water works or light plants—Works or plant, how acquired—Condemnation—
123-48, 142+1042.

1924. Same—Power of council—Terms of bonds, etc.—The bonds hereby authorized shall be ordered to be issued by an ordinance duly passed by the council of such city. All bonds issued under the authority of this act, shall become due not later than thirty (30) years after date and bear interest at not exceeding five and one-half per centum per annum, payable semi-annually. Such bonds shall be signed by the mayor, attested by the city clerk or recorder with the seal of the city thereto affixed, and the coupon evidencing the interest upon such bonds may be executed with the fac-simile signatures of said officers. ('09 c. 205 § 2, amended '15 c. 253 § 1)

[1931—]1. Refunding bonds in cities under home rule charters—Interest—Any city of the fourth class operating under a home rule charter adopted pursuant to section 36, article 4 of the state constitution, in addition to all powers possessed by such city, is hereby authorized to issue and sell its refunding bonds for the purpose of refunding any of the outstanding indebtedness against said city existing in the form of bonds or certificates of indebtedness payable out of the permanent improvement revolving fund of said city, which are due or which the city has the right to pay before maturity, provided that said refunding bonds shall bear interest at a lower rate than the bonds or certificates of indebtedness refunded and the principal of said refunding bonds shall not exceed the principal of the bonds to be refunded. ('17 c. 335 § 1)

[1931—]2. Same—How issued and paid—Said bonds shall be issued only in pursuance of a resolution adopted by a majority vote of the city council or other governing body of said city and shall be paid from the permanent improvement revolving fund of said city out of the moneys to be collected from the special assessments payable into said fund, provided that if there is not sufficient money in said fund, the said refunding bonds shall be paid from the general fund, such amount to be replaced in the general fund from the said special assessments when and as collected. ('17 c. 335 § 2)

[1931—]3. Same—Form of bonds—Said refunding bonds shall be issued under the corporate seal of the city, signed by the mayor and countersigned by the city clerk and may bear such terms as to place of payment, maturity and rate of interest as may be fixed by resolution of the city council or other governing body of the city, provided, however, that said bonds shall not run more than twenty years, nor bear interest at a rate greater than four and one-half per centum per annum, payable semi-annually, and shall not be sold for less than par. ('17 c. 335 § 3)

[1931—]4. Certain bonds legalized—That in all cases in which during the twelve months immediately preceding the adoption of this act, the city council of any city of the fourth class in this state operating under a charter adopted in accordance with Section 36 of Article 4 of the Constitution of Minnesota, has taken proceedings to hold an election in such city for the purpose of approving of or rejecting the question or proposition whether or not the city should issue its bonds for the purpose of paying the expenses of paving any of its streets and wherein at such election such proposition to issue such bonds was duly approved of by the requisite majority of the voters voting at such election, but wherein the notice of election calling such election and submitting such question to the voters thereof failed to clearly state whether or not such question would be submitted to the voters thereof for approval or rejection, and failed to state the purpose for which the money so voted would be used, such proceedings of said city council and such election, and the bonds of said city when issued in accordance with said

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proceedings and election, are hereby legalized and made valid and effectual for all purposes. ('17 c. 46 § 1)

[1931—]5. **Same—Pending actions**—This act shall not apply to or affect any action now pending involving the validity of any such resolution or proceedings of any such city council or the validity of any such election. ('17 c. 46 § 2)

[1931—]6. **Bonds for city jails in cities under home rule charters legalized**—In any case in any city of the fourth class, operating under a home rule charter authorizing the issuance of bonds of the city for the purpose of acquiring, erecting or raising funds to aid in and defray the expense of constructing a building to be used as and for a city hall or jail, or both, therein, when the governing body thereof has duly determined that it was for the best interests of the city that such bonds should be issued for said purposes or any of them, and such proposition has been duly submitted or attempted to be submitted to the legal voters thereof at a general election or at a special election called for the purpose, and a majority of the votes cast at such election were in favor of issuing such bonds, that then and in every such case the proceedings so taken are hereby declared effectual, and the bonds so voted legalized and declared valid; provided that such bonds, when so issued, did not or will not cause the net indebtedness of such city, as defined in chapter 10 of the General Statutes of 1913, to exceed five per centum of the assessed value of the taxable property thereof for the year preceding that of their execution and delivery. ('17 c. 57 § 1)

[1931—]7. **Same—Pending actions**—This act shall not apply to or affect any actions or appeals now pending, in which the validity of such proceedings or of such bonds is called in question. ('17 c. 57 § 2)

[1931—]8. **Certain bonds for waterworks and light and power plants legalized**—That in all cases where the electors of any city in this state having ten thousand inhabitants, or less, whether organized under general or special laws, or under a home rule charter, at any general or special election therein have heretofore voted for an issuance of bonds of said city for the purpose of purchasing or acquiring waterworks or light or power plants, or for constructing such works, or plants or any part or portion thereof either within or without the corporate limits of such city or partly within or partly without such city, and have issued and sold such bonds, or which have been so voted, and shall hereafter be issued in pursuance of such election, such bonds are hereby declared to be legal, valid and binding obligations of such city. Provided however, that the proposition to issue said bonds shall have received the number of votes cast thereon, at such election, favorable to the proposition, required by the provisions of the act or of the charter under which the same was submitted to carry the same; provided further, that this act shall not apply to any action now pending involving the legality of any bonds so voted or issued. ('17 c. 191 § 1)

POWER OF VILLAGES TO ISSUE BONDS FOR CERTAIN PURPOSES

1932. **Bonds for refunding floating indebtedness—Limit of debt**—Any village in this state having a floating indebtedness may issue the bonds of such village for the purpose of refunding such indebtedness in the manner hereinafter provided; but no such bonds shall be issued or sold by said village, which, with the bonds already issued, shall exceed fifteen per cent of the assessed valuation of the real estate and personal property, exclusive of moneys and credits of said village. Such bonds shall bear interest at a rate not to exceed six (6) per cent per annum, payable annually or semi-annually, as may be determined by said village council and may run for a period not exceeding twenty years. Such bonds shall not be sold for less than their par value and the proceeds thereof shall be used exclusively for the payment of such outstanding floating indebtedness of said village. ('05 c. 123 § 1, amended '15 c. 169; '17 c. 336 § 1)

[1933—]1. **Bonds for refunding floating indebtedness**—That any village of this state, acting under the general laws thereof, having a floating indebtedness at the time of the passage of this act, exceeding Five Thousand Dollars, is hereby authorized and empowered to fund such floating indebtedness in the manner provided in Sections 1932 and 1933 of the General Statutes of 1913; provided that such funding bonds so issued with the bonds already issued by said village do not make the net indebtedness of said village, as defined in Section 1848 of said General Statutes, exceed fifteen per cent of the assessed valuation of real estate therein. ('15 c. 320 § 1)

[1933—]2. **Certain village hall bonds legalized**—That when any village organized and acting under any special law of this state shall have heretofore purchased or agreed to purchase a building to be used as a village hall therein, together with the site therefor, and shall have heretofore by resolution of the village council or common council of the village determined to issue its bonds for that purpose in an amount not exceeding the cost of such purchase, if such purchase and bond issue shall have heretofore been authorized or attempted to be authorized by a majority of at least five-eighths ($\frac{5}{8}$) of the legal voters of the village voting at an election called or attempted to be called and held therein for that purpose, then and in every such case, notwithstanding any question as to the village being specifically authorized by the said special law under which it is acting, the village council or common council, or other governing body, is hereby authorized and fully empowered to complete such purchase, if it shall by resolution deem the same to be for the best interests of the village, and to issue the bonds of the village for that purpose in an amount not exceeding the purchase price of such village hall and site, but not exceeding five per cent (5%) of the assessed value of the property therein for taxation purposes, due at such time or times as it may determine, not exceeding fifteen (15) years, with interest at a rate not exceeding five per cent (5%) per annum payable annually or semi-annually at such place or places and executed in such manner as said governing body may determine, and sell or complete the sale thereof at not less than par; and all proceedings to that end heretofore taken by any such village under special law are hereby legalized. ('15 c. 7 § 1)

[1933—]3. **Same—Pending actions**—This act shall not apply to or affect any actions or appeals now pending, in which the validity of such proceedings is called in question. ('15 c. 7 § 2)

[1933—]4. **Certain funding bonds legalized**—That where the electors of any village in this state have at any election, general or special, held therein, voted for an issuance of bonds of such village for the purpose of funding its floating indebtedness, then in every such case the bonds of such village which have been so voted and issued, or that shall hereafter be issued in pursuance of such election are hereby declared to be legal, valid and binding obligations of such village; provided, however, that the question of funding such indebtedness has been submitted to a vote of the qualified electors of such village in the manner as provided by law in chapter 10, General Statutes of Minnesota 1913 and acts amendatory thereof and a majority of such electors voted in favor thereof. ('17 c. 62 § 1)

[1933—]5. **Same—Limit of issue**—That such bonds may be issued in any sum not exceeding seventy-five hundred dollars (\$7,500.00) anything in the charter of said village or in any law of this state which may prohibit the issuing of any bonds in excess of any specific percentage of the taxable property in such village, to the contrary notwithstanding. ('17 c. 62 § 2)

POWER OF COUNTIES TO ISSUE BONDS FOR CERTAIN PURPOSES

The following acts, empowering counties to issue bonds for certain purposes, or legalizing certain bonds, have not been included:

1915 c. 179, authorizing counties having valuation of \$6,000,000 and not more than \$10,000,000 and area of not less than 75 nor more than 100 townships to issue prior to December 31, 1918, bonds for paying interest coupons on drainage bonds, etc.

1917 c. 13, authorizing counties to issue \$600,000 certificates of indebtedness to take up certificates issued under 1907 c. 130 (applicable to counties having valuation of \$100,000,000 and bonded indebtedness of not more than \$700,000). See Gen. St. 1913 p. 404.

1917 c. 111, authorizing counties having 800,000 inhabitants wherein a county sanitarium is established to issue \$300,000 bonds for enlarging, etc., such sanitarium.

1917 c. 192, authorizing counties having valuation of more than \$6,000,000 and less than \$8,000,000 to issue bonds to take up floating indebtedness.

1917 c. 199, authorizing counties to issue not after May 15, 1917, \$25,000 bonds for improving lakes within such counties.

1917 c. 443, authorizing adjoining counties \$30,000 bonds for roads. Such bonds must be authorized before June 1, 1917.

[1957—]1. **Bonds for refunding floating indebtedness**—The county board of any county in this state may issue and negotiate the bonds of said county to take up the outstanding floating indebtedness thereof now existing. Provided, that the bonds so issued shall be made payable as follows:

One-fifth on December first, 1916; one-fifth on December first, 1917; one-fifth on December first, 1918; one-fifth on December first, 1919; one-fifth on December first, 1920; and shall not bear a higher rate of interest than five per cent (5%) and shall not be sold for less than par and accrued interest from date of issue. ('15 c. 103 § 1)

[1957—]2. **Same—Tax levy, etc.**—The county board of any county in this state that shall have issued and negotiated the bonds of any such county under the provisions of Section 1 of this act [1957—1], shall levy annually in addition to all other taxes a tax sufficient to pay the annual interest due on said bonds and to pay the bond maturing on the first of December of the following year, which taxes shall be collected at the same time and in the same manner as the general taxes are collected. Provided that no such bonds shall be issued unless the county board of the county issuing such bonds shall pass a resolution authorizing the issuance thereof under this act within ninety days after the passage and approval of this act. ('15 c. 103 § 2)

[1957—]3. **Bonds for bridges without submission to voters**—Whenever the county board of any county in this state shall deem it advisable to construct, repair or renew any bridge or bridges over waters within the county or bordering thereon and such county has no outstanding road and bridge bonds issued as such, and such board has been previously petitioned by twenty-five or more voters of the county who are also free holders, to take such action, such county board may cause the bridge bonds of said county to be issued and sold in an amount not exceeding $\frac{1}{2}$ of 1 per cent of the assessed valuation of the taxable property within said county, without submitting the matter to a vote of the electors of said county. Such bonds shall be signed by the chairman of such board and countersigned by the county auditor and shall be payable not more than twenty years from their date, and shall bear interest evidenced by coupons which shall not exceed six per cent per annum payable semi-annually, and shall not be sold for less than par and accrued interest. Bonds issued to defray the expense of state rural highways shall not be considered road and bridge bonds within the meaning of this act. ('17 c. 52 § 1)

[1957—]4. **Same—Not to limit existing laws**—This act shall not be construed as any limitation upon the power of any county or county board under any existing law. ('17 c. 52 § 2)

[1957—]5. **Bond issue for homes for girls and boys in certain counties**—For the purpose of providing funds for the purchase, erection and equipment of homes for boys or girls in connection with the juvenile court pursuant to the provisions of Chapter 83, of the General Laws of Minnesota, for the year 1913, the board of county commissioners in counties of this state now or hereafter having a population of over 200,000 and not over 300,000 inhabitants, is hereby authorized to issue, by resolution duly passed, and to sell not to exceed fifteen thousand dollars (\$15,000) par value of the bonds of such counties. ('15 c. 3 § 1)

[1957—]6. **Same—Terms**—No bond or bonds shall be issued under the authority of this act to run for a longer term than five (5) years or bearing a higher rate of interest than five per cent (5%) per annum. The bond or

bonds to be issued hereunder shall be, subject to the limitations herein expressed, in such form and for such amount or amounts, at such a rate of interest, for such a period and shall be payable at such place as the board of county commissioners shall determine. Such bond or bonds shall be signed by the chairman of the board of county commissioners and shall be attested by the county auditor. ('15 c. 3 § 2)

[1957—]7. **Certain bonds legalized**—In all cases where a county of this state has heretofore issued and sold its bonds containing a recital that they are issued by authority of and in strict accordance with the provisions of chapter 254, General Laws, Minnesota, 1911 [2603-2609], and the purchase price of said bonds has actually been received by the county, said bonds are hereby legalized and made valid and binding obligations of the county which has issued the same. ('17 c. 59 § 1)

[1957—]8. **Same—Pending actions**—This act shall not apply to or affect any bonds, the validity of which is involved in any action now pending. ('17 c. 59 § 2)

POWER OF TOWNS TO ISSUE BONDS FOR CERTAIN PURPOSES

[1967—]1. **Certain refunding bonds legalized**—That in cases where the electors of any town in this state at any annual, general or special election therein, have heretofore voted for an issuance of bonds of said town for the purpose of refunding any bonds of such town heretofore issued and sold as road and bridge bonds, then in such case all bonds of said towns which have been so voted and issued, or which have been so voted and shall hereafter be issued in pursuance of such election are hereby declared to be legal, valid and binding obligations of said town; provided, however, that the propositions to issue such bonds for the purposes of refunding such road and bridge bonds, shall have been submitted to the vote of the electors of such town in same manner as now provided by law in Chapter 10, Revised Laws, 1905, and amendments thereto, for the issuance of municipal bonds, and that the proposition to issue said bonds received a majority of all votes cast thereon at such election; and provided further, that this act shall not apply to any suit now pending involving the legality of any bonds so issued. ('15 c. 256 § 1)

[1967—]2. **Certain refunding bonds legalized**—That all bonds heretofore issued by any township between the first day of July, 1916 and the first day of October, 1916, to refund the floating indebtedness of such township, evidenced by township orders, where the amount of such floating indebtedness so evidenced was in excess of the annual tax levy and had not been authorized by a majority vote of the electors of such town, as provided by section 1190, General Statutes 1913, when the proceedings relative to the issuance of such bonds were in all respects regularly had, as provided by law and the issuance thereof was duly authorized by a vote of more than three-fourths of the electors present and voting at a special town meeting, duly called for the purpose of voting upon the issuance of such bonds, are hereby legalized and declared to be valid and subsisting obligations of such township to the same extent as though such indebtedness sought to be refunded was in all respects duly and regularly incurred by such township. ('17 c. 389 § 1)

POWER OF SCHOOL DISTRICTS TO ISSUE BONDS FOR CERTAIN PURPOSES

[1968—]1. **Certain bonds issued by independent school districts legalized**—All bonds heretofore voted to be issued by any independent school district for the purpose of paying and defraying the expense incurred in connection with the erection and construction of grade or high school buildings, and all outstanding orders in connection therewith, and all expenses incurred, and all orders issued or to be issued in connection with the installing

and placing therein of heating, ventilating and plumbing plants and equipping and furnishing such buildings with apparatus and school furniture under the provisions of Chapter 272 of the General Laws of Minnesota 1905 [1968], and acts amendatory thereof, if any, are hereby legalized and validated and made the legal and valid indebtedness of the school district so incurring such indebtedness or issuing orders therefor. ('15 c. 339 § 1)

[1968—]2. Certain bonds issued by independent school districts legalized—All bonds heretofore issued or voted to be issued by any independent school district for the purpose of paying and defraying the expense incurred in connection with the erection and construction of grade or high school buildings, and all outstanding orders in connection therewith, and all expense incurred, and all orders issued or to be issued for the payment of money realized from the sale of such bonds in connection with the installing and placing therein of heating, ventilating and plumbing plants and equipping and furnishing said buildings with apparatus and school furniture under the provisions of chapter 272 of the General Laws of Minnesota 1905 [1968], and acts amendatory thereof, if any, are hereby legalized and validated and upon their issuance made the legal and valid indebtedness of the school district so incurring such indebtedness, or issuing orders therefor. ('17 c. 54 § 1)

[1968—]3. Certain bonds issued by consolidated school districts legalized—Whenever the school board of any consolidated school district in this state has heretofore adopted a resolution stating that in the opinion of such board it was expedient for the school district in question to issue to the state of Minnesota its bonds for the purpose of completing a new school building and specifying in such resolution the rate of interest, the number of such bonds, the amount of each and the dates of maturity thereof, and calling a meeting of the district to vote upon such question, such resolution being in conformity with the provisions of the constitution and the laws of the state in that regard, and where the notice of such meeting and the form of ballot used was not in conformity with the provisions of law, and at the school meeting the bonding proposition carried by the requisite majority, the action of such school meeting is hereby legalized and the state board of investment is authorized to take said bonds and loan state funds thereon. ('17 c. 260 § 1).

[1968—]4. Certain orders issued by special school districts legalized—Whenever the school directors or school board of any special school district in a city whose population is 10,000 inhabitants but not more than 20,000 inhabitants, and the boundaries of such city and such school district are identical, have issued interest bearing orders within the past five (5) years in an amount not exceeding thirty thousand dollars, (\$30,000.00) and have received full value for all of said indebtedness, and where the amount of such orders so issued is in excess of the legal limitation upon the powers of such school directors, whether contained in general law or in the provisions of any charter of such school district of such city, all such orders so issued by such school directors of any such school district are hereby validated and legalized and the same shall constitute a valid and legal indebtedness of such school district. ('17 c. 138 § 1)

[1968—]5. Same—Tax levy—Reissue—The school directors of any such district may from time to time levy a sufficient amount of taxes to pay such orders together with accrued interest thereon, as such orders become due, and as to such orders not paid when due such school directors may re-issue the same from time to time as in their judgment may be for the best interests of such school district. ('17 c. 138 § 2)

CHAPTER 11

TAXES

GENERAL PROVISIONS

1969. Property subject to taxation—

This section means that all personal property, of whatever nature, not exempt from taxation, shall be liable for taxes. Under this section a membership in the Duluth Board of Trade is taxable (124-398, 145+108, 50 L. R. A. [N. S.] 255, Ann. Cas. 1915C, 538). Taxation, ¶87.

A judgment sustaining an assessment of memberships in a chamber of commerce as moneys and credits under § 2316, held not to bar an assessment of such memberships for a later year as general personal property (161+516). Judgment, ¶604.

Memberships in the Minneapolis Chamber of Commerce, though owned without the state, or within the state, but without Minneapolis, the rights and privileges which give them a value in excess of the value of the tangible property of the Chamber being exercisable there alone, have for the purposes of taxation of such excess value a situs there (161+516). Taxation, ¶98, 260.

St. 1849-58 c. 9 § 1, R. S. 1851 c. 12 § 1, G. S. 1866 c. 11 § 1, Laws 1874 c. 1 § 1, and G. S. 1894 § 1508, cited—124-398, 145+108, 50 L. R. A. [N. S.] 255, Ann. Cas. 1915C, 538.

1970. Property exempt—

The exemption of public school property from taxation has no application to special assessments for local improvements (183-386, 158+635, L. R. A. 1916F, 861). Municipal Corporations, ¶434(3).

1972. Real property defined—

Cited (132-232, 156+128).

Royalties under a mineral lease as rents and profits of land (see 135-413, 161+158). Mines and Minerals, ¶70(1).

1973. Mineral, gas, coal, oil, etc.—

Where the property is described by its government description without mentioning a mineral interest owned separately from the surface, the tax certificate does not cover such mineral interest (125-491, 147+706, L. R. A. 1916D, 804). Taxation, ¶686.

1974. Personal property defined— * * *

5. All gas, electric and water mains, pipes, conduits, subways, poles and wires of gas, electric light, water, heat or power companies, wherever constructed or located, and all tracks, roads and bridges of street railway, plank road, gravel road, turnpike and bridge companies, together with the conduits, poles and wires of such companies erected or laid in connection therewith. (Amended '17 c. 298 § 1)

In general—A membership in the Duluth Board of Trade is property (124-398, 145+108, 50 L. R. A. [N. S.] 255, Ann. Cas. 1915C, 538). Exchanges, ¶7.

Mode of assessment of memberships in the Minneapolis Chamber of Commerce (see 161+516). Taxation, ¶350.

See, also, notes under §§ 1969, 1988.

Constitutionality—This section does not exempt from taxation personal property not included within the classes named (124-398, 145+108, 50 L. R. A. [N. S.] 255, Ann. Cas. 1915C, 538). Taxation, ¶197.

There has been no such settled construction of this section as to justify the application of the doctrine of practical construction (124-398, 145+108, 50 L. R. A. [N. S.] 255, Ann. Cas. 1915C, 538). Statutes, ¶245.

The taxing of a membership in a Board of Trade would not be improper classification (124-398, 145+108, 50 L. R. A. [N. S.] 255, Ann. Cas. 1915C, 538). Constitutional Law, ¶208(4). And it would not be a denial of equality or uniformity (124-398, 145+108, 50 L. R. A. [N. S.] 255, Ann. Cas. 1915C, 538). Taxation, ¶40(1). And the proceedings do not deprive the member of his property without due process (124-398, 145+108, 50 L. R. A. [N. S.] 255, Ann. Cas. 1915C, 538). Constitutional Law, ¶283. Or without compensation (124-398, 145+108, 50 L. R. A. [N. S.] 255, Ann. Cas. 1915C, 538). Eminent Domain, ¶2(11). Or deny him the equal protection of the law (124-398, 145+108, 50 L. R. A. [N. S.] 255, Ann. Cas. 1915C, 538). Constitutional Law, ¶229. Nor would it be double taxation (124-398, 145+108, 50 L. R. A. [N. S.] 255, Ann. Cas. 1915C, 538).

Subd. 6. Credits—Unaccrued rents to issue out of land are not "credits"; and rents due in July for the period from April 1st to July 1st are not taxable as credits May 1st (132-232, 156+128). Taxation, ¶74.

G. S. 1878 c. 1 § 3, and G. S. 1894 § 1510, cited—124-398, 145+108, 50 L. R. A. [N. S.] 255, Ann. Cas. 1915C, 538.

1975. Other definitions— * * *

2. "Credits" shall mean and include every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deed or mortgage, due or to become due, and all shares of stock in corporations the property of which is not assessed or taxed in this state. (Amended '17 c. 130 § 1)

Conditional sale contracts taken by a foreign corporation and recorded in this state are not taxable in this state as credits, where the transactions out of which the contracts arose were interstate in character, and the corporation has done nothing to give such contracts a business situs in this state (161+1054). Taxation, ¶95(3).

Unaccrued rents to issue out of land are not "credits"; and rents due in July for the period from April 1st to July 1st are not taxable as "credits" May 1st (132-232, 156+128). Taxation, ¶74.

1977. Legality presumed—

This section is unavailing to cure the failure of the county auditor to file the designation of a newspaper in which to publish the delinquent tax list, as required by § 2097 (123-273, 143+786). Taxation, ¶688, 693.

That reassessment list sent to auditor under § 2349 did not show the amount of the original assessment held not to invalidate the proceedings (121-421, 141+839). Taxation, ¶474.

Where original judgment book fails to show sale to state, it cannot be presumed that copy judgment book, not in evidence, shows such sale (121-367, 141+493). Taxation, ¶693.

1978. Supervisory powers of tax commission—

The powers conferred on the tax commission are not legislative, and the act is constitutional (121-421, 141+839). Constitutional Law, ¶80(2).

This section has to do only with the abatement and refundment of taxes in connection with completed assessments, while § 2344 deals with raising or lowering valuations for the current year before the assessment is completed (162+675). Taxation, ¶470.

The Minnesota state tax commission may, on proper showing, abate an assessment in proceedings to construct a county ditch; such assessment being "an assessment levied by a municipality for local improvements" within this section, which abatement may be made after ditch is established and assessment confirmed (162+686). Drains, ¶82(5).

LISTING AND ASSESSMENT

1980. Omitted property—Uncollected taxes—

This section does not authorize a reassessment where the real estate is assessed and has paid taxes for the years in question, but where the property was undervalued for those years because the assessing officer took no note of improvements (129-87, 151+537). Taxation, ¶362.

1981. Assessment books—Real property list—Mortgages—Meeting of assessors—Power of tax commission—The county auditor shall annually provide the necessary assessment books and blanks at the expense of the county, for and to correspond with each assessment district. He shall make out, in the real property assessment book, complete lists of all lands or lots subject to taxation, showing the names of the owners, if to him known, and, if unknown, so stated opposite each tract or lot, the number of acres, and the lots or parts of lots or blocks, included in each description of property. The list of real property becoming subject to assessment and taxation every odd numbered year may be appended to the personal property assessment book. The assessment books and blanks shall be in readiness for delivery to the assessors on the last Thursday of March of each year.

The assessors shall meet at the office of the county auditor on said day for the purpose of receiving instructions as to their duties under the laws of the state. Provided, however, that the Minnesota tax commission may in its discretion change the date of such meeting in any county as it deems best in which case such meeting shall be held on the date fixed by said commission. (Amended '17 c. 297 § 1)

By § 3 1917 c. 297 takes effect January 1, 1918.

Description in assessment book held so indefinite as to preclude extinguishment of right of redemption by notice under § 2148 (121-409, 141+796). Taxation, ¶421(1).

[1981—]1. Same—Compensation and mileage of—Each assessor attending such meetings shall receive as compensation for such service the

sum of three dollars and mileage at the rate of five cents per mile for each mile necessarily traveled in going from his home to and returning from, the county seat to be computed by the usually traveled route and paid out of the county treasury. ('17 c. 297 § 2)

1987. Valuation of property—

132-232, 156+128.

Cited in dissenting opinion (132-93, 155+1061).

1988. Classification of property—What percentages of full and true value to be assessed—

The classification involved in this section is not violative of Const. art. 9 § 1, in that it is unreasonable and not based on essential differences (128-384, 150+1087). Taxation, ¶42(1).

This section applies to property within the state owned by telegraph companies (132-93, 155+1061). Taxation, ¶155.

The mains, pipes, and conduits of a gas company are not "tools, implements, and machinery," under class 3, but are properly assessed under class 4 (132-419, 157+638; 132-477, 157+638). Taxation, ¶375(1).

The words "all unplatted real estate" refer to and include land which is adapted to and used for rural or agricultural purposes, and not to land within the limits of a city or village, though not a part of the platted portion thereof, which is used exclusively for urban purposes. A small tract of land formerly within a platted subdivision of Minneapolis, but vacated, was properly taxed at the rate prescribed for platted real estate, where it was used exclusively for urban purposes (135-205, 160+498). Taxation, ¶348.

Relator's street railway tracks, overhead feed and trolley wires, trolley poles, and underground conduits and cables, held assessable under class 4, at 40 per cent. of true value, this class including property not enumerated in the first three; and such property does not come within "tools, implements, and machinery, whether fixtures or otherwise," included in class three, and assessable at 33⅓ per cent. of true value (128-384, 150+1087). Taxation, ¶394.

The assessable value of a membership in the Minneapolis Chamber of Commerce is found by apportioning the value of the membership in excess of the value of the tangible property of the Chamber already assessed equally among the memberships, and taking 40 per cent. thereof (161+516). Taxation, ¶350.

1989. Duties of assessors in odd numbered years as to real property—

In every odd numbered year, at the time of assessing personal property, the assessor shall also assess all real property that may have become subject to taxation since the last previous assessment, including all real property platted since the last real estate assessment in the even numbered year, and all buildings or other structures of any kind, whether completed or in process of construction, of over one hundred dollars in value, the value of which has not been previously added to or included in the valuation of the land on which they have been erected. He shall make return thereof to the county auditor, with his return of personal property, showing the tract or lot on which each structure has been erected and the true value added thereto by such erection. In case of the destruction by fire, flood or otherwise, of any building or structure, over one hundred dollars in value, which has been erected previous to the last valuation of the land on which it stood, or the value of which has been added to any former valuation, the assessor shall determine, as nearly as practicable, how much less such land would sell for at private sale in consequence of such destruction and make return thereof to the auditor. (Amended '17 c. 254 § 1)

LISTING PERSONAL PROPERTY

1994. By whom listed—

Cited (132-232, 156+128).

2013. Forms for listing—Assessor to value—

Cited (124-398, 145+108, 50 L. R. A. [N. S.] 255, Ann. Cas. 1915C, 538).

STATEMENTS BY CORPORATIONS, ETC.

2017. Incorporated banks—

The tax imposed by this section is a tax against the shares of stock, to be paid by the bank from earnings or dividends, and is not a tax against a national bank, and payment thereof cannot be enforced against its assets, where the bank is insolvent and in the hands of a receiver (134-315, 159+754). Taxation, ¶522.

2018. Same—

134-315, 159+754.

2020. Taxes on bank stock a lien—

134-315, 159+754.

2021. Same—

134-315, 159+754.

REVIEW AND CORRECTION OF ASSESSMENTS**2036. Property omitted or undervalued—Governor to appoint examiner—**
121-421, 141+839.**2040. Duties of auditor and assessors—**

121-421, 141+839.

EQUALIZATION OF ASSESSMENTS**2045. State Board of Equalization—Duties—**

The restrictions on the power of the board found in subd. 7 of this section do not apply to the tax commission in view of the general repealing clause of this act (1907 c. 408), and in the amending act of 1909 [§§ 2333-2348] (162+675). Taxation, ¶470.

LEVY AND EXTENSION**2051. City, village, town, and school district taxes—**

Municipal corporations have no inherent power of taxation (129-40, 151+545, Ann. Cas. 1916B, 159). Municipal Corporations, ¶956(1).

2052. Auditor to fix rate—

Cited (162+675).

[2056—]1. **Rate of levy in certain counties—**The county board of any county may levy for county revenue purposes, such amount in excess of existing limitations as may be necessary to defray county revenue expenses, but the total levy for county revenue purposes shall not exceed 8 mills; provided, however, that this act shall not apply to counties having an assessed valuation of more than five million dollars. ('17 c. 106 § 1)

[2058—]1. **Contracts in excess in certain villages legalized—**In all cases where heretofore the authorities of any village of this state, having a population of less than three thousand inhabitants, have in good faith contracted debts or incurred pecuniary liabilities, or both, in violation of the provisions of section 2058 of the General Statutes of 1913, and the person or persons so contracting with such authorities, or to whom such pecuniary liabilities were incurred, have in good faith and in reliance thereon fully performed such contracts and furnished full consideration for such pecuniary liabilities, and said village has received and accepted the benefits thereof, and where the claims arising from such transactions have been allowed by the proper authorities of such village, and no appeal taken from the allowance thereof within the time fixed by law, and warrants or orders of such village have been issued therefor, whether such warrants or orders have been paid or not, such transactions are in all respects validated as against the claim or defense that they were in violation of said section 2058. ('17 c. 268 § 1)

[2058—]2. **Same—Allowance of claims, etc., prima facie evidence—**In all such cases the allowance of such claims and the absence of any appeal therefrom within the time fixed by law and the issuance of warrants or orders therefor shall be prima facie evidence of each of the facts made conditions to the validating thereof as in section 1 of this act [2058—1] provided. ('17 c. 268 § 2)

[2058—]3. **Same—Pending actions—**This act shall not be construed to affect any action now pending wherein such claim or defense is involved, nor the rights or liabilities of any of the parties thereto or parties indirectly affected by the result of such action. ('17 c. 268 § 3)

2059. Tax lists made by auditor—

A county treasurer, in failing to write the words "Sold for taxes" on a tax receipt, is not guilty of a breach of duty, unless the tax list furnished him by the county auditor shows that the land has been sold for taxes; but where a county auditor failed to place on the tax list furnished the county treasurer the words "Sold for taxes," and the treasurer did

not write such words on the receipts for taxes paid by plaintiff after such sale, the auditor was liable for failure to perform the duty required by this section; and although a taxpayer was negligent in failing to pay his taxes, the failure of the auditor to place the words "Sold for taxes" on the list furnished the treasurer was the proximate cause of plaintiff's loss (123-159, 143+257, 51 L. R. A. [N. S.] 137). Counties, ~~89~~90, 91.

COLLECTION BY TREASURER

2062. Lists to treasurer—

Cited (123-159, 143+257, 51 L. R. A. [N. S.] 137).
128-271, 148+116; note under § 2067.

[2063—]1. **Treasurer to publish personal property tax list in counties having less than 150,000 inhabitants—**The county treasurer of each county in this state, which now has or hereafter may have, less than 150,000 inhabitants, shall cause to be published once between January 1st and February 1st of each year in a legal newspaper published in the county, that portion of the current personal property tax list which pertains to personal property taxes in cities, villages, towns or assessment districts nearest the place where said newspaper is published, so far as practicable, the portion of said list to be published in the respective newspaper to be fixed and designated by the county treasurer. ('17 c. 392 § 1)

[2063—]2. **Same—What list shall contain—**Such list shall give the name of the person, firm or corporation assessed for such tax; the city, village, town or assessment district where the same was assessed; the assessed value of personal property for purposes of taxation upon which such tax is based; the amount of the tax; and by reference to school district, the total tax rate. Such list may be in substantially the following form:

PERSONAL PROPERTY TAX LIST

191....

Town, city or village of.....		
Total tax rate by school districts.		
School Dist. No. mills.	School Dist. No.mills.	
School Dist. No. mills.	School Dist. No.mills.	
.....		
Name	Valuation	Tax
.....		
.....		

('17 c. 392 § 2)

[2063—]3. **Same—Proof of publication—Payment—**Proof of the publication of such lists shall be made and filed with the county auditor, and the payment of such publications shall be made on properly itemized and verified statements, from the county revenue fund, at a rate not to exceed the rate fixed by law for other similar publications required to be made by counties. ('17 c. 392 § 3)

2067. Tax receipts—Duplicates—Upon the payment of any tax, the treasurer shall give to the person paying a receipt therefor, showing the name and postoffice address of the person, the amount and date of payment, the land, lot, or other property on which the tax was levied, according to its description on the tax list or in some other sufficient manner, and the year or years for which the tax was levied. If for current taxes on real estate, the receipt shall have written or stamped across its face, "taxes for" (giving the year in figures), or, "First half of taxes for" (giving the year in figures), or, "Last half of taxes for" (giving the year in figures), as the case may be. If land has been sold for taxes either to a purchaser, or to the state, and the time for redemption from such sale has not expired, the receipt for such taxes shall have written or stamped across the face, "Sold for taxes." The treasurer shall make duplicates of all receipts, and shall return all such duplicates at the end of each month to the county auditor who shall file and preserve them

in his office, charging the treasurer with the amount thereof. (Amended '17 c. 18 § 1)

By § 2 1917 c. 18 takes effect January 1, 1918.

The duty imposed upon the auditor by § 2059, and that imposed upon the treasurer by this section, to write on the tax list and tax receipts the words "Sold for taxes," is ministerial, and such officers are liable for failure to perform the duty (123-159, 143+257, 51 L. R. A. [N. S.] 137). Counties, ~~§~~90, 91; Officers, ~~§~~116.

Assuming that the county treasurer failed to write such words, his failure to do so was the proximate cause of the loss of the taxpayer's property by his failure to redeem (123-150, 143+257, 51 L. R. A. [N. S.] 137). Whether his failure to so write was a failure to perform a statutory duty, if the lists furnished him by the auditor did not contain such words, *quære* (123-150, 143+257, 51 L. R. A. [N. S.] 137). A county treasurer, in failing to write the words "Sold for taxes" on a tax receipt, is not guilty of a breach of duty, unless the tax list furnished him by the county auditor shows that the land has been sold for taxes. (126-271, 148+116). Counties, ~~§~~90.

[2067—]1. **Tax receipts to state apportionment of taxes**—The county treasurer of each county shall cause to be printed, stamped or written on the back of all current tax receipts, a statement showing the number of mills of the current tax apportioned to the state, county, city, village, town or school district. ('15 c. 319 § 1)

ACCOUNTING AND DISTRIBUTION OF FUNDS

2075. **Apportionment of penalties and interest**—All penalties and interest accruing upon any tax levied by special assessment or otherwise, for local purposes, on real estate in any incorporated city, borough or village shall be apportioned to the general revenue fund of the city, borough or village where the real estate is situated, and all other penalties, and interest collected on real estate taxes shall be apportioned one-half to the county revenue fund and the other half to school districts of the county in the manner provided for the distribution of other school funds by Section 3763 of the General Statutes of 1894, as amended by Chapter 49 of the General Laws of 1897. Provided that all costs collected shall be apportioned to the county revenue fund. (Amended '15 c. 159 § 1)

DELINQUENT REAL ESTATE TAXES

2097. Designation of newspaper—

It is the intention of this section that a certified copy of the resolution should be filed with the clerk prior to the first publication, and the failure to file it is jurisdictional (123-180, 143+355). Taxation, ~~§~~630, 734(7).

A designation in substantial compliance with this section is a jurisdictional prerequisite to a valid judgment. The statute is not complied with by the filing of an original designation under the hand and official seal of the auditor in the office of the clerk of court, instead of a certified copy, no original or other designation being filed in the auditor's office; the filing of the original in the clerk's office not creating a presumption that an original had been filed by the auditor in his own office. And the evidence is held to sustain a finding that no original auditor's designation of a newspaper in which to publish the delinquent list was filed in his office as required by this section (123-273, 143+786). Newspapers, ~~§~~1(4).

Correction of filing date on resolution designating newspaper. (121-173, 141+101).

2103. What defects jurisdictional—

Statutory requirements as to the steps for determining the amount of the tax are directory, while those relating to enforcement of the tax against property are mandatory (121-421, 141+839).

This section does not cure the jurisdictional defect arising from a failure to file a certified copy provided for by § 2097, prior to the first publication (123-180, 143+355). Taxation, ~~§~~688.

This section does not cure the failure of the auditor to file in his office the designation of a newspaper in which to publish the delinquent tax list, as required by § 2097 (123-273, 143+786). Taxation, ~~§~~688, 693.

2105. Judgment when no answer—Form—Entry—

Cited (133-380, 158+635, L. R. A. 1916F, 861).

2108. Application for judgment—Defenses—

This section does not restrict the right of defense to cases in which there has been some omission of statutory requirements, and an objection that improper items of charge were included in the amount of an assessment may be interposed in the assessment proceedings,

and hence certiorari will not lie, there being an adequate remedy otherwise (134-204, 158+977). Municipal Corporations, ¶512(1).

In view of the provision of this section making it a permissible defense that land has been assessed and taxed at a valuation greater than its real and actual value, the action of the state tax commission in refusing to reduce an alleged excessive valuation is not reviewable by certiorari, there being an adequate remedy at law in the statutory proceeding to enforce the tax (135-282, 160+665). Taxation, ¶493(4).

TAX SALES

2117. Public vendue—Procedure—

126-271, 148+116; note under § 2067.

2118. Certificate of sale—Form—Effect—Record—

Where the property is described by its government description, without mentioning a mineral interest owned separately from the surface, the tax certificate does not cover such mineral interest (125-491, 147+706, L. R. A. 1916D, 304). Taxation, ¶686.

2119. Who may purchase—Owner—

The owner of property cannot cut out a city assessment on his property by buying up a subsequent tax title. (124-296, 145+24). Taxation, ¶733.

A property owner, and his successors in interest held bound by contract to pay taxes on a strip of land used by himself and the adjoining owner as an alley, so that he could not obtain a tax title thereto, though he had made a separate conveyance of the alley strip (122-411, 142+805). Taxation, ¶107, 674.

2121. Wrong name of owner—

Where the property is described by its government description without mentioning a mineral interest owned separately from the surface, the tax certificate does not cover such mineral interest (125-491, 147+706, L. R. A. 1916D, 304). Taxation, ¶686.

2122. Entries in judgment books after sale—

Tax assignment certificate void where record does not show that land was bid in for the state (121-367, 141+493). Taxation, ¶742.

Where original judgment book fails to show sale to state, it cannot be presumed that copy judgment book, not in evidence, shows such sale (121-367, 141+493). Taxation, ¶693.

2123. Record of assignment of certificate or deed on sale for taxes or special assessments—

An assignment of a certificate held by one in adverse possession of land held not to break the continuity of his possession (132-311, 156+350). Adverse Possession, ¶52.

2125. Taxes on land sold—Payment by purchaser or assignee—

127-124, 149+16; note under § 8172.

2126. Lands bid in for state—Assignment—Certificate—

A state assignment certificate for land bid in by the state, wherein the assignees are named "Goodrich and Oliphant," is sufficient to transfer to them the interest and tax lien of the state; the identity of the assignees being shown by extrinsic proof (135-186, 160+490). Taxation, ¶731.

In making assignment of a tax certificate the auditor exercises a statutory power, and, where made for a less amount than required by the statute, they are void. Tax assignment certificates, conveying the interest of the state in lands bid in for the state, but still subject to redemption by the owner, do not have the conclusive effect given to a governor's deed conveying forfeited land and executed after the time for redemption has expired. (134-373, 159+825). Taxation, ¶731.

2127. Unredeemed lands—Forfeited sale—

Cited (133-153, 157+1072).

Tax deed failing to show that the sale was made in compliance with the statutory requirements is void (129-25, 151+421). Taxation, ¶754.

The authority of the Governor to execute a deed under this section is dependent on the expiration of the time for redemption (129-72, 151+534). Taxation, ¶749.

There is no real forfeiture to the state (132-311, 156+350). Taxation, ¶695.

2128. Conduct of sale—Such sale shall be conducted by the county auditor in such manner as shall be directed by the state auditor. Each parcel shall be sold to the highest cash bidder therefor but not for a less sum than the aggregate taxes, penalties, interest and costs charged against it, unless the cash value thereof fairly determined by the county board and approved by the Minnesota tax commission shall be less than such aggregate, in which case the value so fixed and approved shall be the minimum price for which such property may be sold. Provided that all parcels bid in for the state for taxes for the year 1910 or prior years may be disposed of for one-half of the total taxes as originally assessed. Provided, further that all unsold parcels

which are subject to delinquent taxes for ten years or more and which have been subject to sale under the provisions of this section and sections 2127 and 2129, for three years or more, may be disposed of for a sum not less than one-fifth (1/5) of the total taxes as originally assessed.

The purchaser shall forthwith pay the amount of his bid to the county treasurer, and the officer conducting the sale shall give to him a certificate in a form prescribed by the attorney general, in which shall be set forth the name of the purchaser, a description of the land sold, the price paid and the date and place of the sale. The auditor and treasurer of the county shall attend such sale, the former to make a record of all sales thereat, and the latter to receive all moneys paid on account thereof. (Amended '17 c. 303 § 1)

1917 c. 303, does not expressly amend this section, but it is entitled "An act amending section 2128 of the General Statutes of Minnesota for 1913, relating to delinquent taxes."

Taxes delinquent prior to year 1914—See 1915 c. 334, "An act to enforce payment of real estate taxes upon all unsold tracts of land included in the sale held in the year 1914 under the provisions of chapter 543, General Laws of 1913."

129-25, 151+421; note under § 2127.

One claiming title to land sold under G. S. 1894 § 1616 must prove authority from the state auditor to make such sale; recitals in the deed executed by the county auditor not being evidence of such authority (131-468, 155+640). Taxation, ¶788(5), 810(1).

2129. Purchaser to receive deed.—

See §§ [2130—]1 to [2130—]3.

The deed is not conclusive that the time for redemption had expired when it was executed, and the owner of the land may show that no notice was given under § 2149 (129-72, 151+534). Taxation, ¶788(7).

R. L. 1905 § 938 cited on question of effect of tax assignment certificates (134-373, 159+825).

129-25, 151+421; note under § 2127.

2130. Same—How made and when—

See §§ [2130—]1 to [2130—]3.

134-373, 159+825.

Where the sale is not made in accordance with the statutory requirements, and no valid notice to redeem is given, the right of redemption is not cut off. A notice failing to state that the certificates were presented to the county auditor by the holder thereof is fatally defective (129-25, 151+421). Taxation, ¶704.

[2130—]1. **Tax commission to issue state tax deeds**—That all the duties and powers heretofore conferred by statute upon the governor concerning the issuing of state tax deeds under the provisions of Sections 2129 and 2130, General Statutes of 1913, and Chapter 543, Laws of 1913, are hereby conferred upon the chairman of the Minnesota Tax Commission. ('15 c. 332 § 1)

This act takes effect May 1, 1915.

[2130—]2. **Same—Application for deed, to whom and how made—Records of commission**—That all applications for such tax deeds shall be made to the chairman of the Minnesota Tax Commission and the applicant shall present to such official the original tax certificate and certified copy of the notice of expiration of redemption, with proof of service thereof and of the filing of such proof in the office of the county auditor, and certificate of such auditor that the time of redemption has expired and that no redemption has been made, and such other proof as said chairman may require. All of said papers shall be filed in the office of the secretary of the Minnesota Tax Commission, and shall remain therein as permanent records in said office. ('15 c. 332 § 2)

[2130—]3. **Same—Fees of county auditor**—The county auditor shall be entitled to collect a fee of fifty cents from such applicant for each certified copy of a notice of expiration of redemption and the preparation of the other necessary papers and information in connection therewith, which fee shall be retained by such auditor in addition to his salary provided by law. ('15 c. 332 § 3)

2132. **Certificates and deeds as evidence—Grounds for setting aside—Evidence of payment—County and state, when parties—**

G. S. 1894 § 1604 cited on question of effect of tax assignment certificates (134-373, 159+825).

Certificate of tax assignment not prima facie evidence where judgment book fails to show that land was bid in for the state (121-387, 141+493). Taxation, ¶742.

2133. Action to set aside—Limitation—

The limitation prescribed by this section does not commence to run until 60 days after a valid notice of expiration of the time of redemption has been served. (135-186, 160+490). Taxation, ¶806(1).

2134. Invalid certificate—State's lien passes, when—

Not repealed by § 2150 (121-301, 141+183, Ann. Cas. 1914C, 755). Taxation, ¶696. 126-218, 148+273; note under § 2188.

REDEMPTION FROM TAX SALES**2138. Amount payable—**

Subd. 3—Cited and applied (133-456, 158+701).

2148. Notice of expiration of redemption—

In general—Deed is not conclusive that time for redemption had expired, and owner may show that no notice was given under this section (129-72; 151+534). Taxation, ¶788(7).

Under this section the court might adjudge a lien to the holder of a tax certificate issued upon a sale subsequent to the taking effect of 1902 c. 2 § 47, though the sale and certificate be valid and there is time and opportunity to serve a notice of the expiration of the time of redemption (126-218, 148+273). Taxation, ¶814(4).

Form of notice—The part of this section providing a form of notice was superseded by 1905 c. 270 (§ 2149, post), so that a notice of expiration of redemption from any tax sale subsequent to 1902 must conform substantially to the form prescribed by 1902 c. 2 § 47 (131-332, 155+107). Taxation, ¶696.

155+107, followed, and held that a notice failing to conform to § 47, c. 2, Laws 1902, as required by c. 270 Laws 1905, was invalid (132-144, 155+1038; 131-332, 155+107; 135-186, 160+490). Taxation, ¶704.

Statement of amount required to redeem—Where the amount stated in the notice includes delinquent taxes accruing subsequent to the sale, it is incumbent on the holder of the tax certificate to affirmatively prove by evidence outside the recitals in the notice the amount of such delinquent taxes, and that he paid the same, and the date of such payment. In the absence of such evidence, the right of redemption is not terminated (133-456, 158+701). Taxation, ¶810(3).

A notice which imposes on the redemptioner the burden of determining which of two amounts stated therein as necessary to redeem is correct is insufficient. The notice in this respect must be definite and specific (130-397, 153+758, Ann. Cas. 1916E, 157). Taxation, ¶704.

Qualifications required of newspaper—Where the notice is served by publication the newspaper must possess the qualifications required by statute to entitle it to publish such notices; and the requirement that it must "be circulated in or near its place of publication to the extent of at least 240 copies" is not satisfied by showing that 240 copies are published, without showing where they are circulated (130-202, 153+517). Taxation, ¶706.

To whom directed and upon whom served—For the notice to be effective, it must be directed to the person in whose name the land stands assessed on the assessment book; the recitals in the notice not furnishing the required proof (129-367, 152+764). Taxation, ¶722(3).

Notice given to the certificate holder himself is insufficient, in the absence of proof that the title to the land then stood in his name (130-202, 153+517). Taxation, ¶703.

Misnomer in notice—A notice directed to "Goodridge-Call L'b'r. Co.," the land being assessed in the name "Goodridge-Call Lbr. Co." is sufficient (130-202, 153+517). Taxation, ¶703.

Return of service—Under this section, when no one is in possession, there must be a return of the sheriff to that effect as a prerequisite to the publication of the notice of expiration of the period of redemption (133-153, 157+1072). Taxation, ¶706.

2149. Expiration of redemption—Notice—

130-397, 153+758, Ann. Cas. 1916E, 157; 129-25, 151+421; note under § 2130.

That part of § 2148 prescribing form of notice is superseded by 1905 c. 270 (this section), so that a notice of expiration of redemption from any tax sale subsequent to 1902 must conform substantially to the form prescribed by 1902 c. 2 § 47 (131-332, 155+107; 132-144, 155+1038; 124-321, 145+27). Taxation, ¶696, 704.

[2149—]1. **Appointment of resident agent on whom notice may be served—Statement filed with county auditor—**That any person or corporation having any right, title or interest in or to any land or real property in this state may file or cause to be filed in the office of the county auditor of the county in which such land or real property is situated a statement in writing containing, first, the name of the person or corporation having such right, title or interest; second, a description of the land or real property in which

such right, title or interest is had; and third, the designation of some person who is a resident of such county or of some corporation which has an office or place of business within such county upon whom or upon which a personal service may be made of notices of the expiration of the period of redemption of land or real property from tax sales. Each such statement shall be signed by the person or corporation having such right, title or interest or by any agent or attorney of such person or corporation, but need not specify the nature of such right, title or interest. ('17 c. 388 § 1)

[2149—]2. **Same—Duties of auditor—Fees—Statement, when ceases to be valid—Release of particular parcel**—Each such statement so filed in the office of any county auditor in this state shall be immediately numbered and filed in his office by such county auditor consecutively in the order in which it is received and such county auditor shall, at the same time, enter consecutively in the order in which such statement is received, in a book to be kept by him for that purpose, first, the file number of such statement; second, the date when such statement is received and filed by him; third, the name of the person or corporation named in such statement as having some right, title or interest in land or real property, with the post office address of such person or corporation, if given in such statement; and fourth, the name of the person or corporation named in such statement as the one upon whom or upon which a personal service of notice may be made. And at the same time such county auditor shall enter the file number of such statement in his real estate transfer book or books under each piece or parcel of land described in such statement. For the duties required of the county auditor by this act he shall be paid, for his own use and as an additional emolument of his office, by the person presenting such statement to be filed, a fee of twenty-five cents for each piece or parcel of land described in such statement. Each such statement shall cease to be valid and effectual as such for any and all the purposes of this act at the expiration of five years from the date of its filing, or when the person named therein as the one upon whom a personal service of notices may be made dies or ceases to be a resident of such county, or when the corporation named therein as the one upon which a personal service of notices may be made ceases to have an office or place of business within such county. Provided, however, that the person or corporation named in a statement filed under the provisions of this act as having such right, title or interest may file in the same office in which such statement is filed an instrument releasing any particular piece or parcel of land or real property described in such statement from the effect of such statement, such releasing instrument to be executed with the same formalities as are necessary to entitle conveyances of real estate to record. Such releasing instrument shall be by the said county auditor immediately attached to and filed with such statement affected thereby. Every person or corporation filing such releasing instrument shall, before such releasing instrument is filed, pay to said auditor, for his own use, a fee of ten cents for each such releasing instrument. From the time such releasing instrument is so filed such statement affected thereby shall cease to be valid and effectual as to such particular piece or parcel of land or real property so released, but shall nevertheless be and remain valid and effectual as such for any and all the purposes of this act as to each and every other piece or parcel of land or real property therein described. ('17 c. 388 § 2)

[2149—]3. **Same—Service to be made on resident agent**—Service of notice of expiration of redemption from all tax sales, whether of lands bid in by the state or otherwise sold, shall be made upon resident agents appointed under this act, in the same form, in the same manner and within the same time, as is now or may hereafter be provided by law for personal service upon the person to whom such notice of expiration of redemption is directed. The full period of redemption shall not expire until sixty days shall have elapsed after the service of such notice and proof thereof has been filed. ('17 c. 388 § 3)

[2149—]4. **Same—Not to supersede other notices**—The service of notices required by the provisions of this act shall not supersede or take the place of

the notices required by any other law of this state to be served or published, but shall be additional thereto. ('17 c. 388 § 4)

2150. Notice not to issue in certain cases after six years from sale—Certificates, when void—Lien—No notice of the expiration of the time of redemption upon any certificate of tax judgment sale issued to an actual purchaser, or upon any state assignment certificate shall issue or be served under the provisions of Section 1654 of the General Statutes of 1894, or any other law in force at the time of the passage of this act, after the expiration of six years from the date of the tax judgment sale described by any such certificate; nor shall any such certificate be recorded in the office of any register of deeds after the expiration of seven years from the date of such sale. All such certificates upon which such notice of expiration of redemption shall not be issued and served, and such certificate recorded in the office of the proper register of deeds within the times limited by this act, shall be void and of no force or effect for any purpose whatever, and failure to serve such notice or record such certificate within the time herein prescribed shall operate to extinguish the lien of said purchaser for the taxes for the year or years in such certificate described and appearing, anything in any other statute of this state to the contrary notwithstanding. (Amended '15 c. 77 § 1)

1915 c. 77 § 1 added the words beginning "and failure to serve such notice." Section 42 provides that the act shall not affect any pending action or proceeding. By section 3 the act takes effect March 1, 1918. See § [2150—]1.

Does not repeal §§ 2134, 2165, 2168, 2171, 2188 (121-301, 141+183, Ann. Cas. 1914C, 755). Taxation, ¶696.

The limitations contained in this section apply only to tax certificates issued before the lands become forfeited to the state, and to notices of expiration of the time to redeem issued thereon. The time for giving such notices as to lands forfeited to the state remained unlimited (124-321, 145+27). Taxation, ¶701.

Failure to record certificate does not extinguish tax lien (121-301, 141+183, Ann. Cas. 1914C, 755). Taxation, ¶688.

[2150—]1. Notice not to issue in certain cases after six years from sale—Certificate, when void—Lien—No notice of the expiration of the time of redemption upon any certificate of tax judgment sale issued to an actual purchaser or upon any state assignment certificate issued under the provisions of section 1601 General Statutes 1894 or upon any certificate issued to an actual purchaser at any forfeited tax sale held under the provisions of section 1616, 1617 of the General Statutes 1894, or under the provisions of sections 936, 937 and 938 of the Revised Laws of 1905, or under the provisions of section 2127, 2128 and 2129 General Statutes 1913, or under any of said sections or any act amendatory thereof, shall be issued or served after the expiration of six years from the date of the tax judgment sale described by any such certificate; nor shall any such certificate be recorded in the office of any register of deeds after the expiration of seven years from the date of such sale. All such certificates upon which such notice of expiration of redemption shall not be issued and served and such certificate recorded in the proper register of deeds' office within the time limited by this act, shall be void and of no force and effect for any purpose whatever, and failure to serve such notice or record such certificate within the time herein prescribed shall operate to extinguish the lien of said purchaser for the taxes for the year or years in such certificate described and appearing and the lien of all subsequent taxes paid under any such certificate. Provided, that the lien of any taxes for the year or years described in any such certificate, or the lien of any subsequent taxes paid under any such certificate may be enforced by a sale of the property covered by such lien by a sale thereof by foreclosure or other proper action or proceeding at any time within nine months after the taking effect of this act.

Provided further, however, that this act shall not apply to or affect liens of the state in and upon lands which have been bid in for the state and subsequently sold or assigned. ('17 c. 488 § 1)

By section 3 the act takes effect January 1, 1918.

See § 2150.

[2150—]2. Same—Pending actions—This act shall not affect any action or proceeding now pending in the courts of this state. ('17 c. 488 § 2)

SUPP.G.S.MINN.'17-14

REFUNDMENT

2157. On sale or assignment, when allowed—

Cited (121-301, 141+183, Ann. Cas. 1914C, 755).

Under this section the holder of a tax certificate is entitled to refundment of money paid for his certificate when the assessment of the tax is void, and he is entitled to a refundment of subsequent void taxes paid which the statute permits to be tacked to his certificate, where, at the time of payment, he is without knowledge of the invalidity of the taxes though the payment, if made by the owner of the land, would be voluntary and not recoverable (161+511). Taxation, ¶821(2).

Effect of registration of title (see 123-397, 143+981, L. R. A. 1916D, 1). Records, ¶9(13).

2159. On judgment—County to be party—

Effect of registration of title (see 123-397, 143+981, L. R. A. 1916D, 1). Records, ¶9(13).

ACTIONS INVOLVING TAX TITLES

2165. Tax judgment or sale set aside—Purchaser's lien—Sale to satisfy—

Not repealed by § 2150 (121-301, 141+183, Ann. Cas. 1914C, 755). Taxation, ¶696.

Although plaintiff's tax title has failed, he is entitled to have his lien for the taxes paid by him enforced in his action to determine adverse claims (135-186, 160+490). Taxation, ¶814(4).

It is immaterial that the judgment adjudging the amount of the lien fails to direct a sale for its enforcement (128-498, 151+201). Taxation, ¶827.

That a tax lien in favor of plaintiff was adjudged against defendant's land as a whole, instead of placing specific amounts against each tract, is not open to objection (128-498, 151+201). Quietting Title, ¶52.

Costs held properly awarded to defendant on adjudging the amount of plaintiff's lien (128-498, 151+201). Quietting Title, ¶54.

2168. Action to quiet title—

123-180, 143+355.

In general—That defendant does not establish a record title does not deprive him of the right to be heard on appeal (129-72, 151+534).

Not repealed by § 2150 (121-301, 141+183, Ann. Cas. 1914C, 755). Taxation, ¶696.

Extent of purchaser's lien—Although plaintiff's tax title has failed, he is entitled to have the lien for the taxes paid by him enforced in his action to determine adverse claims (135-186, 160+490). Taxation, ¶814(4).

Under this section a tax claimant, whose title is invalid because of a defective notice of expiration of the period of redemption, is not entitled to a lien for the costs incurred upon such notice (133-153, 157+1072). Taxation, ¶824.

In an action to determine adverse claim, where defendant answered, claiming title absolute, the court properly allowed costs to plaintiff, though under this section the lien was decreed defendant as holder of the tax certificate (126-218, 148+273; 128-498, 151+201). Taxation, ¶818.

Under this section the court might adjudge a lien to the holder of a tax certificate issued upon a sale subsequent to the taking effect of 1902 c. 2 § 47, though the sale and certificate be valid, and there is time and opportunity to serve a notice of the expiration of the time of redemption (126-218, 148+273). Taxation, ¶814(4).

2170. Plaintiff to pay taxes in action to set aside—

129-367, 152+764; 126-218, 148+273; note under § 2168.

MISCELLANEOUS PROVISIONS

2171. Lien of real estate taxes—

126-218, 148+273; note under § 2188.

Not repealed by § 2150 (121-301, 141+183, Ann. Cas. 1914C, 755). Taxation, ¶696.

Although plaintiff's tax title has failed, he is entitled to have the lien for taxes paid enforced in his action to determine adverse claims (135-186, 160+490). Taxation, ¶814(4).

By force of § 2134 the lien is transferred to tax title holder, who may enforce lien without compliance with § 2150 (121-301, 141+183, Ann. Cas. 1914C, 755). Taxation, ¶823.

2172. Assessments for local improvements in cities—Priority of liens—

The provision of this section that a later tax lien is superior to an earlier city assessment lien is not against public policy (124-300, 145+21). Taxation, ¶502.

Where title is obtained under tax liens which are equal in right of priority by sale and expiration of the period of redemption, the holders thereof become tenants in common (124-300, 145+21). Tenancy in Common, ¶3.

A purchaser of a tax title, based on taxes for 1906 to 1909, inclusive, is a tenant in common with a purchaser under a St. Paul city assessment lien accruing in 1906 (124-305, 145+25). Tenancy in Common, ¶3.

Under 1905 c. 200, a tax title, based on taxes for 1906 to 1909, inclusive, is equal in right of priority with title based on a St. Paul city assessment lien accruing in 1906 (124-305, 145+25). Taxation, ¶785, 786.

A tax title based on a single forfeiture sale for taxes for the years 1891, 1892, and 1902 to 1909, inclusive, is equal in right of priority with a lien based upon a St. Paul city assessment accruing in 1909 (124-296, 145+24). Taxation, ¶733.

Tax titles based on tax sales for general taxes of 1906 to 1909, inclusive, and on a sale to enforce a St. Paul city assessment lien accruing in 1906, are superior to separate city assessment liens accruing at different times during years from 1896 to 1901, but are inferior to city assessment liens accruing in 1912 (124-305, 145+25). Taxation, ¶785, 786.

Under 1905 c. 200, general tax liens and city assessment liens are of equal rank and general rules as to tax liens of equal rank apply. Each lien is superior to all that precede it in time. A later tax or assessment lien will take priority over all earlier liens, whether for taxes or assessments. Priority is determined as of the date of accrual of the original lien, not as of the date of sale. City assessments accruing in any year are equal in right of priority with lien of taxes for that year (124-300, 145+21). Taxation, ¶509, 510.

Where land is sold at a forfeiture tax sale for taxes for a number of years for the entire amount, the lien of the holder of a certificate issued on such sale is equal in right with an assessment lien accruing in any one of those years (124-300, 145+21). Taxation, ¶733.

2184. Structures, etc., not to be removed—Injunction—

This section does not affect the right of the owner to recover from a stranger who removes timber (129-25, 151+421). Trespass, ¶19.

2188. Real estate tax judgment—No limitation—

Although plaintiff's tax title has failed, he is entitled to have the lien for taxes paid by himself and his assignors enforced in his action to determine adverse claims (135-186, 160+400). Taxation, ¶814(4).

A lien adjudged under § 2168 may include taxes paid subsequent to the giving of a defective notice of redemption, whether such taxes be paid before or after they become delinquent (128-218, 148+273). Taxation, ¶814(4).

Not repealed by § 2150 (121-301, 141+183, Ann. Cas. 1914C, 755). Taxation, ¶396.

2190. Taxes paid by mortgagees, etc.—

126-218, 148+273; note under § 2188.

2192. Deeds, etc.—Payment before transfer and record—Auditor's certificate—Penalty, etc.—

162+525.

RAILROAD COMPANIES

2226. Gross earnings tax—Return of earnings—When payable—

Defendant and certain navigation companies agreed that defendant should employ stevedores to perform work, part of which it was the duty of defendant to perform; the navigation companies paying the actual cost of the labor. Defendant acted in the transactions as the hiring and disbursing agent of the boat companies, but making no profit. Held, in the absence of fraud or evasion of the obligations of either party to the state, moneys received from such boat companies are not subject to the gross earnings tax (130-377, 153+850). Taxation, ¶382.

Where a carrier acts as the hiring and disbursing agent of another carrier in the performance of duties partly owing by both, for which the former receives no profit, the moneys collected by it are not subject to the gross earnings tax, where such services are included in the freight charges of the other company which pays a gross earnings tax thereon, since to impose such tax on both companies would involve double taxation (130-377, 153+850). Taxation, ¶47(1).

2232. Same—Taxes, how apportioned—

Apportionment of earnings, where several corporations use same tracks, and some of such corporations are liable to the gross earnings tax, and some not (122-106, 142+19). Taxation, ¶894.

2235. Same—Apportionment, how certified—Duties of county and state auditors—Taxes, how apportioned—

Const. art. 9 § 9 has no application to the issuance of the warrant by the auditor on the state treasury for the distribution of the tax collected under this section (125-67, 145+607). States, ¶130.

FREIGHT LINE COMPANIES

2250. Freight line company defined—

1907 c. 250 held not an unlawful burden on interstate commerce (129-30, 151+410). Commerce, ¶72.

1907 c. 250 held to authorize imposition of the tax on refrigerator cars owned by a packing company, and operated by it over the lines of different railroad companies, though the motive

power was furnished by the railroad companies, and such companies received the same freight as they would have received had the cars belonged to them (129-30, 151+410). Taxation, ¶ 148.

TELEGRAPH AND TELEPHONE COMPANIES

2262. Telegraph companies—Annual statement—

132-93, 155+1061.

2263. State board of equalization to assess—Rate—

Property of telegraph companies, if not included in § 1988, is to be valued and assessed under this section, at its "full and true value in money" (132-93, 155+1061). Taxation, ¶ 155.

2264. Collection—Action—Distress—

132-93, 155+1061.

[2267—]1. Certain penalties and interest on certain telephone companies cancelled—That the penalties and interest accruing on unpaid delinquent gross earnings taxes for the year 1913 and prior years of telephone companies whose gross earnings for said years have not exceeded five hundred dollars (\$500) per year are hereby cancelled and abated, provided such companies pay all of such delinquent taxes into the state treasury on or before July 31, 1915. ('15 c. 172 § 1)

INHERITANCES, DEVISES, BEQUESTS AND GIFTS

2271. Taxation on inheritances, etc.—

Cited (162+525).

The language of this section indicates an intention to impose a succession tax in all cases in which the legislature has the power to impose such tax, and it cannot be construed as applying only where the devolution of the property is governed by our laws (128-371, 150+1094, L. R. A. 1916A, 901). Taxation, ¶ 860.

Subd. 2—As between debtor and creditor the situs of a debt is the domicile of the creditor. But he may give it a situs elsewhere, and it may be taxed under the laws of the state where the evidences of indebtedness are deposited. But the statute imposes a tax upon the transfer of the property and not upon the property itself. The transfer having been made in this state by a resident is taxable here, although the actual situs of the property was in Kentucky, and though such transfer may be subject to tax in that state (124-508, 145+390, 56 L. R. A. [N. S.] 262, Ann. Cas. 1915B, 861). Taxation, ¶ 868(2).

The devolution of debts owed by residents of this state, whether evidenced by promissory notes or not, and of the stock of corporations of this state, and of the stock of national banks located in this state, is subject to a succession tax in this state, though the debts were owing to, and the stock was held by, nonresident decedents (128-371, 150+1094, L. R. A. 1916A, 901). Taxation, ¶ 867(1).

Bonds of a railroad company, incorporated under the laws of Minnesota, having its principal place of business and general offices in the state, payable in New York, owned by a resident of Illinois and in his possession there at the time of his death, the persons succeeding thereto being residents of Illinois, the railway being subject to jurisdiction in states other than Minnesota, and it not being necessary to invoke the laws of Minnesota or resort to its courts, are not subject to a succession tax in Minnesota. Distinguishing (128-371, 150+1094, L. R. A. 1916A, 901; 133-117, 157+1076, L. R. A. 1916E, 1288). Taxation, ¶ 867(2).

Where the obligation is secured by a mortgage of real property of the corporate debtor, organized under the laws of the state as a railway corporation, a portion of which is in Minnesota and a larger portion in other states, through which the railroad passes, where it is subject to jurisdiction, and where the debt can be enforced and the mortgage foreclosed, and the whole mortgaged property sold, the fact that the mortgage covers property in Minnesota does not give it a taxable situs, supporting a succession tax (133-117, 157+1076, L. R. A. 1916E, 1288). Taxation, ¶ 868(1).

Subd. 5—Where a testator residing in Minnesota exercised by will a power of appointment given in the will of his mother, executed in Kentucky, in respect to property in the custody of a resident of Kentucky, such exercise of the power is constituted by the transfer of the property and not its creation (124-508, 145+390, 50 L. R. A. [N. S.] 262, Ann. Cas. 1915B, 861). Taxation, ¶ 878(2).

Under this section, the appointment, when made, is a taxable transfer in the same manner as though the property to which such appointment relates belonged absolutely to the donee of the power, and had been bequeathed or devised by the will. Therefore this case is treated as though the testator actually owned the property and had bequeathed it to the persons named in the will (124-508, 145+390, 50 L. R. A. [N. S.] 262, Ann. Cas. 1915B, 861). Taxation, ¶ 878(2).

2273. To take effect on death—When payable—Value of future or limited estate, etc.—

Prior to the amendment made by 1911 c. 209, the tax was computed upon the value of the inheritance at the time of decedent's death, and it became due when the beneficiary entered into the possession and enjoyment of any part exceeding the statutory exemption (132-104, 155+1077). Taxation, ~~§~~887, 895(4).

The inheritance tax law, as amended by 1911 c. 209, is not unconstitutional as embracing more than one subject not expressed in its title, or as infringing the equality provisions of the state and federal constitutions or the provision relating to the impairment of contracts (128-371, 150+1094, L. R. A. 1916A, 901). Constitutional Law, ~~§~~119, 229(1); Statutes, ~~§~~121(4); Taxation, ~~§~~121.

Where present value of precedent estate is ascertained, present value of estate passing to remaindermen is difference between present values of precedent estate and of entire estate, and tax thereon is payable presently, without regard to ultimate disposition of remainder (162+459). Taxation, ~~§~~897.

This section requires immediate payment of all inheritance taxes, except in single case of tax measured by value of estate or interest not susceptible of present valuation. That persons to whom succession will ultimately pass may not yet be known, and that amount which will pass to particular person may not yet be known, is not ground for deferring payment of tax (162+459). Taxation, ~~§~~887.

If inheritance tax rate be uncertain tax is to be paid at highest rate to which succession would, in any event, be subject; and if subsequent events show that such rate is too high, excess tax is to be refunded (162+459). Taxation, ~~§~~886½.

2281. Transfer by foreign executors, etc.—Personal property of nonresident decedent—Proceedings before attorney general—Shares of stock—Appeal—Where law of domicile exempts transfers of personal property of residents of Minnesota—

This act is not unconstitutional (128-371, 150+1094, L. R. A. 1916A, 901); note under § 2273.

A nonresident decedent's personal property having a situs in this state is subject to the succession tax of this state, though the devolution of such property is governed by the law of the decedent's domicile (128-371, 150+1094, L. R. A. 1916A, 901). Taxation, ~~§~~868(2).

The reciprocal exemption amendment made by 1911 c. 209, subsequently repealed, construed (see 128-371, 150+1094, L. R. A. 1916A, 901). Taxation, ~~§~~872.

2283. Application for letters testamentary, etc.—Notice—Determination of value of inheritance, etc.—

This act is not unconstitutional (128-371, 150+1094, L. R. A. 1916A, 901); note under § 2273.

2284. Appraisers—

This act is not unconstitutional (128-371, 150+1094, L. R. A. 1916A, 901); note under § 2273.

2285. Inheritance, etc., how appraised—

This act is not unconstitutional (128-371, 150+1094, L. R. A. 1916A, 901); note under § 2273.

2286. Notice of appraisal—Powers and duties of appraisers—Compensation and fees—

This act is not unconstitutional (128-371, 150+1094, L. R. A. 1916A, 901); note under § 2273.

2288. Notice upon determination—Additional clerical assistance—

This section, as amended by 1911 c. 209, is not unconstitutional (128-371, 150+1094, L. R. A. 1916A, 901); note under § 2273.

2289. Objections—Notice and hearing—Reassessment—Bill of particulars—General inventory and appraisal—

This section, as amended by 1911 c. 209, is not unconstitutional (128-371, 150+1094, L. R. A. 1916A, 901); note under § 2273.

2290. Nonpayment of tax—Duties of county officers—Hearing in probate court—Action by state—Property omitted—

In a proceeding for the collection of an inheritance tax, the state acts in its governmental capacity, not in its proprietary interests, and is not liable for costs or disbursements when the proceeding fails (133-117, 158+637, L. R. A. 1916E, 1288). States, ~~§~~215.

2292. Where estate of nonresident not probated—Agreement by attorney general to compound tax—Consent to assignment or delivery of property—

This section, as amended by 1911 c. 209, is not unconstitutional (128-371, 150+1094, L. R. A. 1916A, 901); note under § 2273.

2293. Powers of attorney general—Citation to persons having knowledge, etc.—Production of books, etc.—Penalty for refusal—Fees—Cited (181-118, 154+750).

MORTGAGES ON REAL PROPERTY

2301. Mortgage defined—

This act is intended solely as a revenue measure, and is not a restriction upon the right to contract, and if the instrument contains the information required, and the tax is assured to the state, the instrument executed is not invalid (122-419, 142+721). Mortgages, ¶54.

When parties, by mutual mistake, fail to insert in a deed given to secure a debt the fact that it is intended as security and the amount of the debt secured, the instrument may be reformed so as to comply with this section (122-419, 142+721). Reformation of Instruments, ¶18.

1907 c. 328, imposes no obligation on the mortgagee to pay the registry tax if he does not choose to record or enforce the mortgage (125-218, 146+350, 51 L. R. A. [N. S.] 465, Ann. Cas. 1915C, 774).

2302. Tax on record or registration—Rates—A tax of fifteen cents is hereby imposed upon each hundred dollars, or fraction thereof, of the principal debt or obligation which is, or in any contingency may be, secured by any mortgage of real property situate within the state executed and delivered after the passage and approval hereof and recorded or registered hereafter; provided that any such mortgage heretofore executed and delivered shall not be recorded or registered without payment of the tax originally stipulated in section 2 hereof as originally enacted; provided further that if any such mortgage shall describe any real estate situate outside of this state, such tax shall be imposed upon such proportion of the whole debt secured thereby as the value of the real estate therein described situate in this state bears to the value of the whole of the real estate described therein, as such value shall be determined by the state auditor upon application of the mortgagee; and provided further that if the maturity of any portion of said debt secured by the said mortgage, as therein stipulated, shall be fixed at a date more than five years after the date of said mortgage, then and in that case, the tax to be paid on such portion shall be at the rate of twenty-five cents on each hundred dollars or fraction thereof. (Amended '17 c. 73 § 1)

2307. Prepayment of tax—Evidence—Notice—

Where a contract for the sale of land is pleaded in the complaint and admitted in the answer, it is not material, in determining the rights of the parties between themselves, whether or not the registry tax has been paid (128-307, 150+903). Vendor and Purchaser, ¶345.

Evidence held not to show any rights or equities requiring the court to relieve a junior redemptioner, claiming under a subsequent mortgage, recorded without prepayment of the mortgage registry tax (127-37, 148+1068, Ann. Cas. 1916C, 527). Quieting Title, ¶44(3).

The payment of the tax is not an obligation imposed on the mortgagee. He is merely required to pay the tax in case he desires to record or enforce the mortgage (125-218, 146+350, 51 L. R. A. [N. S.] 465, Ann. Cas. 1915C, 774). Mortgages, ¶200.

[2313—]1. Certain instruments intended as mortgages legalized—That any instrument made and recorded prior to January 1, 1916, which is absolute in form but given and intended as a mortgage or security for a debt and in which the fact that it is so intended and the amount of such debt are not expressed and upon which instrument the mortgage registration tax has been paid, is hereby legalized and made as valid and effectual to all intents and purposes and of the same force and effect in all respects, for the purpose of notice, evidence, validity, as a mortgage or security, foreclosure, cancellation or otherwise, as if such instrument had contained a statement that it was intended as security and the amount of the debt thereby secured; provided that nothing in this act shall be held to apply to any action heretofore commenced or now pending in any of the courts of this state. ('17 c. 401 § 1)

[2315—]1. Certain foreclosures, etc., of contracts legalized, etc.—That in all cases where a contract for the purchase or sale of real estate has been foreclosed or cancelled or attempted to be foreclosed or cancelled, and such foreclosures or cancellation is defective by reason of the fact that prior

thereto no mortgage registration tax has been paid on said contract, such foreclosure or cancellation and all proceedings in connection therewith and the record thereof, if any shall have been made, are hereby legalized and made as valid and effectual to all intents and purposes and of the same force and effect in all respects, for the purpose of notice, evidence, validity, foreclosure, cancellation or otherwise as if such mortgage registration tax had been paid prior to the time of the commencement of any such proceedings. Provided that the mortgage registration tax on said contract has been paid in full before the passage of this act. ('15 c. 235 § 1)

[2315—]2. Same—Rights, when barred—Any person, persons, co-partnership or corporation as vendee holding any contract for the purchase or sale of real estate, which said contract has heretofore been foreclosed or cancelled or attempted to be foreclosed or cancelled, and the mortgage registration tax was not paid, said person, persons, co-partnership or corporation shall have thirty days from and after the passage of this act to assert any rights they may have under and by virtue of said contract, or be forever barred from asserting same. Provided, that nothing in this act shall be held to apply to any action heretofore commenced or now pending in any of the Courts of this State. ('15 c. 235 § 2)

[2315—]3. Certain foreclosures, etc., of contracts legalized, etc.—That in all cases where a contract for the purchase or sale of real estate has been foreclosed or cancelled, or attempted to be foreclosed or cancelled, and such foreclosure or cancellation is defective by reason of the fact that prior thereto no mortgage registration tax has been paid on said contract, such foreclosure or cancellation, and all proceedings in connection therewith and the records thereof, if any, shall have been made, are hereby legalized and made as valid and effectual to all intents and purposes and of the same force and effect in all respects, for the purpose of notice, evidence, validity, foreclosure, cancellation and in all respects, the same as if such mortgage registration tax had been paid prior to the time of the commencement of any such proceedings, provided, that said mortgage registration tax on any such contract shall be paid in full before the trial of any action commenced by the vendee of any such contract subsequent to the passage of this act. ('17 c. 288 § 1)

[2315—]4. Same—Rights, when barred—Any person, persons, copartnership or corporation as vendee holding any contract for the purchase or sale of real estate which said contract has been heretofore foreclosed or cancelled, or attempted to be foreclosed or cancelled, and the mortgage registration tax was not paid, said person, persons, copartnership, or corporation shall have one year from and after the passage of this act to assert any rights they may have under and by virtue of said contract, or be forever barred from asserting same, provided, that nothing in this act shall be held to apply to any action heretofore commenced or now pending in any of the courts of this state. ('17 c. 288, § 2)

MONEY AND CREDITS

2316. Definition—Tax rate—

Cited (132-232, 156+128).

A judgment sustaining assessment of memberships in a chamber of commerce as moneys and credits under this section held not to bar assessment of such memberships for a later year as general personal property under §§ 1969-1975 (161+516). Judgment, ~~604~~.

2317. How listed—

Unaccrued rents to issue out of land are not "credits" (132-232, 156+128). Taxation, ~~74~~.

2319. Tax commission to prepare instructions—Form of return—Blanks—The Minnesota tax commission shall annually prepare instructions for bringing in the lists required by the preceding section. They shall prepare a form for the returns which the taxpayers are required to make by this act, and this form shall be printed on a separate sheet, and shall be entirely distinct from the forms prepared for the returns of other classes of property.

This form shall require the taxpayer to make a return of the total amount of his "money" and "credits" taxable under this act.

The county auditor shall cause to be printed and shall furnish assessors blank lists for the return of property taxable under this act, in such form as the Minnesota tax commission may prescribe, and the assessor shall furnish one of such blank lists to each person in his district liable to taxation. ('11 c. 285 § 4, amended '17 c. 129 § 1)

MINNESOTA TAX COMMISSION

2333. Commission created—

Cited (162+675).

2343. Powers and duties—

Cited (162+686).

The powers conferred on the tax commission are not legislative, so as to render the statutes unconstitutional (121-421, 141+839). Constitutional Law, ¶80.

2344. To have powers of state board of equalization—Meetings—Other powers and duties—

The powers conferred are not legislative, and the act is constitutional (121-421, 141+839). Constitutional Law, ¶80.

This section is not unconstitutional as denying due process of law (121-421, 141+839). Constitutional Law, ¶284.

Literal compliance as to giving of notice is immaterial, where the objecting party in fact appears and is heard (121-421, 141+839). Taxation, ¶450(1).

Under subd. 5 of this section the state tax commission may reduce the assessed value of real or personal property below that fixed by the city assessor or county board, without approval of city or county taxing authorities (162+675). Taxation, ¶470.

Evidence held to sustain order of state tax commission reducing the assessed valuation of iron mines, ore, etc., from that assessed by city assessor within rules governing court in reviewing the commission's action on certiorari (162+675). Taxation, ¶493(7).

Refusal of state tax commission reducing a city assessor's valuation of iron mines, ore, etc., to order mine owners to produce their books, showing costs of mining and to compel owners' witnesses to answer questions on subject, held no ground for reversal (162+675). Taxation, ¶493(8).

2348. Property omitted or undervalued—Reassessment—

This section does not deny due process of law (121-421, 141+839). Constitutional Law, ¶284.

This section is not violative of Const. art. 11 § 4, providing for election of county and township officers (121-421, 141+839). Officers, ¶2.

This section is not violative of Const. art. 9 § 1, in that it permits a person to be singled out, and his property reassessed on a different basis from that of other property (121-421, 141+839). Taxation, ¶40.

That complaint did not allege complainant's interest in such a way as to be covered by the verification held immaterial (121-421, 141+839). Taxation, ¶483.

Complaint merely "complaining," and not "alleging" the facts, held sufficient (121-421, 141+839). Taxation, ¶483.

This section does not limit the persons who can make the complaint to a court, the legislature, or a committee thereof (121-421, 141+839). Taxation, ¶461.

2349. Qualification of assessors—Reassessment, how made—Grievances—Appeals—

The powers conferred on the special assessor are not legislative (121-421, 141+839). Constitutional Law, ¶80.

This section is not violative of Const. art. 11 § 4, providing for election of county and township officers (121-421, 141+839). Officers, ¶2.

This section does not deny due process of law (121-421, 141+839). Constitutional Law, ¶284.

This section is not violative of Const. art. 9 § 1, in that it permits a person to be singled out, and his property reassessed on a basis different from that of other property (121-421, 141+839). Taxation, ¶40.

Notice of appeal from reassessment held sufficient (121-421, 141+839). Taxation, ¶493. That the reassessment list sent to the auditor did not show the amount of the original assessment held not to render the proceedings void, in view of § 1977 (121-421, 141+839). Taxation, ¶491.

Where notice of appeal is given the court acquires jurisdiction, though the county auditor fails to file a certified copy of the assessment, and on appeal to the supreme court the merits will be determined, though a default judgment was entered in the district court based on the reassessment (121-421, 141+839). Taxation, ¶493.

CHAPTER 12

MILITARY CODE

MILITIA

2351–2452. [Repealed.]

See § [2452—]98.

[2452—]1. **Military code**—This act shall be known as the military code. ('17 c. 400 § 1)

[2452—]2. **Militia—Exemptions**—The militia shall consist of all able-bodied male citizens of the state and all other able-bodied males resident therein who have or shall have declared their intention to become citizens of the United States, who shall be more than eighteen years of age, and, except as hereinafter provided, not more than forty-five years of age, and said militia shall be divided into three classes, the national guard, the naval militia, and the unorganized militia.

The officers, judicial and executive of the government of the United States and of the states; persons in the military or naval services of the United States; customhouse clerks, persons employed by the United States in the transmission of the mail; artificers and workmen employed in the armories, arsenals, and navy yards of the United States; pilots; mariners actually employed in the sea service of any citizen or merchant within the United States shall be exempt from militia duty without regard to age, and all persons who because of religious belief shall claim exemption from military service if the conscientious holding of such belief by such person shall be established under such regulations as the president of the United States shall prescribe, shall be exempt from militia service in a combatant capacity; but no person so exempted shall be exempt from militia service in any capacity that the president of the United States shall declare to be noncombatant. (2351–57 and 59) ('17 c. 400 § 2)

[2452—]3. **State census—Duties of enumerators, superintendent and adjutant general**—Whenever a state census is taken, each enumerator, in addition to his other duties, shall designate upon his return all persons enumerated by him who are subject to military duty under this chapter. As soon as the returns are complete, the superintendent of the census shall make and certify to the adjutant general lists of the names, alphabetically arranged and consecutively numbered, of all persons so designated in each town, village and city, arranged by counties, and showing the age, occupation and address of each person. And he shall accompany such lists with a table showing the number of enumerated militiamen in each town, village, city and county. The adjutant general shall prescribe blanks therefor. (2352) ('17 c. 400 § 3)

[2452—]4. **Duties of assessors—Duplicate lists—Compensation**—Whenever the governor shall so direct by his proclamation all such assessors shall make upon blanks prescribed by the adjutant general, duplicate lists of the names, alphabetically arranged and consecutively numbered, of all militiamen living in their respective districts, with the age, occupation, and postoffice address of each. One of said lists shall be filed with the county auditor, and one with the clerk of the town, village, or city in which the assessor resides; and no compensation shall be allowed for any services of an assessor until he has filed with such clerk an affidavit showing full compliance on his part with the foregoing requirements. (2353) ('17 c. 400 § 4)

[2452—]5. **Auditor to correct lists, furnish copies, etc.**—Each auditor shall add to the list so filed with him the names of all militiamen omitted, and erase the names of those shown to be improperly enrolled, giving notice of such changes to the proper clerks. On or before October 1st in such year, he shall

transmit to the adjutant general a certified copy of the rolls so filed and corrected. In addition thereto, or in lieu thereof, the adjutant general may require of the auditor a statement showing the number so enrolled in each town, village, and city of his county. (2354) ('17 c. 400 § 5)

[2452—]6. **Information required—Penalties**—Every householder shall disclose, upon the application of assessors and enumerators authorized to make such enrollment, the names of all militiamen residing in his house; and every person, upon like application, shall give his name, age, and address. Every person who shall wilfully refuse such information, or give false answers to the proper inquiries of any such enrolling officer, and every enrolling officer who shall neglect any duty imposed by this chapter, shall be deemed guilty of a misdemeanor. (2355) ('17 c. 400 § 6)

[2452—]7. **Calling out militia—Draft, etc.**—The governor, whenever he shall deem it necessary to call out the enrolled militia for military duty, may require the mayors of the several municipalities and the chairmen of the several town boards to appoint a time and place for the assembling of such militia; and they shall forthwith give notice, by public proclamation, or by written or oral notice to each person, of such assemblage. At the appointed time and place they shall accept volunteers to the number designated by the governor's order, supplying any deficiency by draft. The names of the militiamen so accepted or drafted shall be forwarded to the governor forthwith. The governor may prescribe and enforce uniform rules for the conduct of drafts, appoint all officers necessary therefor, and fix the amount of their pay, not exceeding the rate of pay prescribed for the national guard or volunteers in the federal service. (2356) ('17 c. 400 § 7)

[2452—]8. **Muster—Organization—Command, etc.**—The men whose names are so forwarded shall be mustered at once into the service of the state for such period as the governor shall direct, not exceeding three years. They shall be organized as prescribed for existing organizations of the national guard. Such new organizations shall be officered, equipped, trained, and commanded according to the laws governing the national guard. (2357) ('17 c. 400 § 8)

[2452—]9. **Desertion**—Every enrolled militiaman who fails, without reasonable excuse, to appear at the appointed time and place of assemblage, or, being accepted as a volunteer or duly drafted, fails to report for muster as lawfully required, shall be considered and treated as a deserter. (2358) ('17 c. 400 § 9)

[2452—]10. **Commander-in-chief—Powers and duties—Staff**—The governor shall be commander-in-chief of the militia, except so much thereof as may be in the actual service of the United States, and may employ the same for the defense or relief of the state, the enforcement of its laws, and the protection of life and property therein. He shall make and publish regulations, not inconsistent with law, for the government of the national guard, and enforce all the provisions of this chapter. He may appoint a staff, consisting of an adjutant general, with the rank of brigadier general, who shall be or has been an officer of the national guard, of at least three years' prior service as such, or an honorably discharged soldier of the United States in any war; and five aides-de-camp to be detailed from the majors of the line without prejudice to their regular duties. (2359) ('17 c. 400 § 10)

[2452—]11. **Adjutant general—Term—Removal**—The adjutant general shall be appointed and commissioned for a term of two years and until his successor has qualified, unless sooner removed by the governor. The first term hereunder shall commence the first Monday in January, 1919. (2360) ('17 c. 400 § 11)

NATIONAL GUARD

[2452—]12. **National guard, how constituted**—The Minnesota national guard shall consist of the regularly enlisted militia between the ages of eighteen and forty-five years organized, armed, and equipped as hereinafter

provided, and of commissioned officers between the ages of twenty-one and sixty-four years. In time of peace it shall consist of three regiments of infantry, organized into a brigade, and one regiment of field artillery which may be attached to the brigade for the purpose of administration and instruction; also the several staff corps and departments, similar to the staff corps and departments prescribed for the regular army of the United States, which are hereby authorized to the extent that the same may be necessary to provide proper staff officers and enlisted men for the national guard as herein established. The term "National Guard" shall apply only to the militia organized as a land force, provided, that the number of officers and enlisted men of the national guard may be increased from time to time and organized so as to meet the minimum requirements of the federal laws. (2361-58 and 62) ('17 c. 400 § 12)

[2452—]13. **Governor to fix number and grades of officers, etc.**—For the purpose of conforming the national guard more closely to the organization of the United States army, and not otherwise, the governor on the recommendation of the military board may by orders issued from time to time, fix the number and grades of officers and enlisted men in the staff corps and departments. And in case of war, invasion, insurrection, riot or imminent danger of either, the governor may temporarily increase such force to meet such emergency. Staff officers, including officers of the pay, inspection, subsistence, and medical departments, hereafter appointed shall have had previous military experience and shall hold their positions until they shall have reached the age of sixty-four years, unless retired prior to that time by reason of resignation, disability, or for cause to be determined by a court-martial legally convened for that purpose, and vacancies among said officers shall be filled by appointment from the officers of the militia. (2362) ('17 c. 400 § 13)

[2452—]14. **Organization of national guard units**—Except as otherwise specifically provided herein, the organization of the national guard, including the composition of all units thereof, shall be the same as that which is or may hereafter be prescribed for the regular army, subject in time of peace to such general exceptions as may be authorized by the secretary of war. (2363-60) ('17 c. 400 § 14)

[2452—]15. **Staff corps and departments**—The staff corps and departments shall consist of such officers and enlisted men respectively as may be prescribed by federal authority for this state. (2364) ('17 c. 400 § 15)

[2452—]16. **Staff appointments—Enlisted men**—The officers of the staff corps and departments shall be appointed by the military board, and commissioned by the governor. The enlisted men shall be recruited and warranted by their respective chiefs. Provided, however, that where officers of the staff corps and departments are attached or detailed to regimental or higher units and a vacancy occurs in such detail or detachment, the organization commander will make appointment to fill said vacancy. (2365) ('17 c. 400 § 16)

[2452—]17. **Military board**—The brigade commander or senior officer of the brigade, and the regimental commanders, or senior officer of each regiment not acting as brigade commander, shall constitute a military board, and meet quarterly at such stated time and place as they may fix, and at such other times and places as they may be convened by the adjutant general or the brigade commander. The board shall consider the status and needs of the national guard and such other matters as may be referred to them, and make suitable recommendation thereon through the adjutant general to the governor. The members shall receive no compensation or allowance for expenses beyond transportation and pay for one day's attendance at each stated session of the board, or when convened by the adjutant general. (2366) ('17 c. 400 § 17)

[2452—]18. **Enlistments**—The period of enlistment in the national guard shall be that which is now or may be hereafter prescribed by congress. Hereafter all men enlisting for service in the national guard shall sign an enlist-

ment contract and take and prescribe to the oath now or hereafter prescribed by congress. (2367-69 and 70) ('17 c. 400 § 18)

[2452—]19. **Non-commissioned officers—Appointment, etc.**—Non-commissioned officers shall be appointed by the commanding officer of the regiment on the recommendation of the company commander and may be reduced to the ranks by the regimental commander. (2368) ('17 c. 400 § 19)

[2452—]20. **Qualifications for national guard officers**—Officers of the national guard shall not be commissioned as such unless they shall have been selected from the following classes and shall have taken and subscribed to the oath of office prescribed by congress. Officers or enlisted men of the national guard; officers on the reserve or unassigned list of the national guard; officers, active or retired, and former officers of the United States army, navy and marine corps; graduates of the United States military and naval academies and graduates of schools, colleges and universities where military science is taught under the supervision of an officer of the regular army, and, for the technical branches and staff corps or departments, such other civilians as may be especially qualified for duty therein. ('17 c. 400 § 20)

[2452—]21. **Officers, how selected**—Line officers in the regiments will be selected and appointed by the regimental commanders respectively. Field officers, and general officers will be selected and appointed by the military board. (2369-2372) ('17 c. 400 § 21)

[2452—]22. **Commissions**—Any person hereafter appointed and commissioned an officer of the national guard shall successfully pass such tests as to his physical, moral and professional fitness as the president shall prescribe. The examination to determine such qualifications for commissions shall be conducted by a board of three commissioned officers appointed by the secretary of war from the regular army or the national guard, or both. Officers shall be commissioned by the governor, and the commission shall designate the arm, staff corps or department, and, in the case of line officers, the regiment in which they are appointed. Officers will be assigned or reassigned to duty in the various organizations by the regimental or higher commander. (2373-75) ('17 c. 400 § 22)

[2452—]23. **Elimination and disposition of officers**—At any time the moral character, capacity, and general fitness for the service of any national guard officer may be determined by an efficiency board of three commissioned officers, senior in rank to the officer whose fitness for service shall be under investigation, such board to be appointed by the regimental or brigade commander, and if the findings of such board be unfavorable to such officer and be approved by the official authorized to appoint such an officer, he shall be discharged. Commissions of officers of the national guard may be vacated, upon resignation, absence without leave for three months, upon the recommendation of an efficiency board, or pursuant to sentence of a court-martial. Officers of said guard rendered surplus by the disbandment of their organizations shall be placed in the national guard reserve. Officers may, upon their own application, be placed in the said reserve. (2373-77) ('17 c. 400 § 23)

RESIGNATIONS AND DISCHARGES

[2452—]24. **Commissioned officers**—Resignations of commissioned officers shall be in writing, addressed to the adjutant general and be transmitted by and through all intermediate officers who shall indorse their approval or disapproval thereon; and the same shall not take effect until accepted by the governor. Acceptance of a resignation after five years' service or on account of physical disability, shall entitle the officer to a certificate of honorable discharge; but, if tendered while the guard is on active duty, such certificate may be refused. (2374) ('17 c. 400 § 24)

[2452—]25. **Discharge of enlisted men**—An enlisted man discharged from service in the national guard shall receive a discharge in writing in such form and with such classification as is or shall be prescribed for the regular army

and in time of peace discharges may be given prior to the expiration of terms of enlistment under such regulations as the president may prescribe. (2375-72) ('17 c. 400 § 25)

[2452—]26. **Dishonorable discharge—Effect—**A dishonorable discharge from service in the national guard shall operate as a complete expulsion from the guard, a forfeiture of all exemptions and privileges acquired through membership therein and disqualification for any military office under the state. The names of all persons dishonorably discharged in any month shall be published by the adjutant general at the end of each month and a complete list thereof shall be kept posted in all the armories. No person so discharged shall be admitted to any armory or other meeting place of the guard or to the immediate vicinity of any encampment, drill or parade of troops. All commanding officers are hereby required to enforce these prohibitions. (2376) ('17 c. 400 § 26)

[2452—]27. **Officers, when and how retired—Marks for long service—**Any commissioned officer of the national guard who has served or shall have served as such officer for a period of not less than ten years and any commissioned officer of the national guard who has been honorably discharged from the army of the United States after serving therein for a period of ninety days or more during any war and who shall have served as such officer of the national guard for a period of not less than five years and any commissioned officer of the national guard who has become, or who shall hereafter become disabled and thereby incapable of performing the duties of his office, may, upon his own request in writing, stating the grounds therefor and by order of the commander-in-chief, be withdrawn from active service and have his name placed on a roll in the office of the adjutant general to be known as the "roll of retired officers," and shall thereby be entitled to wear, on state or other occasions of ceremony, the uniform of the rank last held by him. The commander-in-chief may, by general order, provide a suitable mark of distinction for all officers and enlisted men who have served in the national guard for an aggregate period of ten, fifteen and twenty years, respectively and for like service hereafter. (2377) ('17 c. 400 § 27)

[2452—]28. **National guard reserve—**A national guard reserve shall be organized and maintained under such rules and regulations as the president of the United States may prescribe in accordance with the federal law. ('17 c. 400 § 28)

PRIVILEGES

[2452—]29. **Exemptions from jury duty—Poll and road tax—Civil process—Execution, etc.—**During his term of service every officer and enlisted man of the national guard shall be exempt from poll or road taxes and from duty as a juror; and, if honorably discharged after five years of continuous service therein, he shall be exempt from jury duty forever. No member of the guard shall be arrested, or served with any summons, order, warrant or other civil process while going to, attending or returning from any place to which he is required to go for military duty; but nothing herein shall prevent his arrest by order of a military officer or for a felony or breach of the peace. And the uniforms, arms and equipments of such members shall be exempt from seizure or sale for debt. (2378) ('17 c. 400 § 29)

[2452—]30. **Leaves of absence for certain state employees—**All officers and employes of the state or subdivision or municipality thereof who shall be members of the national guard shall be entitled to leave of absence from their respective duties without loss of status, or efficiency rating, on all days during which they shall be engaged in field or coast-defense training or active service ordered or authorized under the provisions of federal or state law and without loss of pay or time for a period not exceeding fifteen days in any one year. ('17 c. 400 § 30)

[2452—]31. **Protection for official acts—Firing on mobs—**The commanding officer of any militia force engaged in the suppression of an insurrection, the dispersion of a mob or the enforcement of the laws shall exercise his dis-

cretion as to the propriety of firing upon or otherwise attacking any mob or other unlawful assembly; and, if he exercise his honest judgment thereon, he shall not be liable in either a civil or a criminal action for any act done while on such duty. But no officer, under any pretense or in compliance with any order, shall direct or permit his men, or any of them, to fire blank cartridges upon any mob or unlawful assemblage, under penalty of dishonorable dismissal from the service. No officer or enlisted man shall be held liable in either a civil or a criminal action, for any act done under lawful orders and in the performance of his duty. (2379) ('17 c. 400 § 31)

[2452—]32. Action against officer—Security for costs, etc.—Any person bringing an action or proceeding against a military officer of the state for any act done in the course of his official duty, or against any person acting under the order or authority of such officer, shall give security for the costs, disbursements and reasonable attorney's fees incurred by the defendant in defending the same, in the same manner and subject to the same regulations, so far as applicable, as in the case of a non-resident plaintiff. And if the plaintiff fails to recover, such attorney's fees may be taxed with the costs and disbursements and judgment therefor be entered against him and his sureties on the bond. (2380) ('17 c. 400 § 32)

INCORPORATION

[2452—]33. What bodies may incorporate—Names—Each of the several organizations of the national guard may incorporate by filing with the secretary of state, a copy of its constitution duly adopted and approved by the adjutant general and in that case shall have power to acquire, hold, sell, lease, mortgage and convey such property, real and personal, as may be necessary or proper for carrying out the purposes of their organization. Any of them may sue and be sued by such name as it shall have adopted with the approval of the adjutant general, but no member of such corporation shall be personally liable for its acts, omissions, or debts. (2381) ('17 c. 400 § 33)

[2452—]34. Officers and directors—Powers—Constitution and by-laws, etc.—The commanding officer of the several organizations shall be president of such corporation, the next in command its vice-president and the junior officer, secretary. The board of directors of such corporation shall consist of said officers and the first sergeant, if a company or battery and a treasurer who shall be elected by a ballot and a majority vote at the annual meeting of the corporation. Each organization may adopt a constitution and by-laws for the government of its affairs, which shall be consistent with this chapter and, with any amendments thereof, must have the approval of the regimental commander and be filed with the adjutant general before taking effect. All contracts shall be signed by the president and secretary and no money shall be expended except upon the order of the president; but the vice-president may act in place of the president when the latter is absent or disabled. (2382) ('17 c. 400 § 34)

[2452—]35. Existing corporations continued—Property—By-laws—All corporations heretofore formed under the military code, shall continue as such, but their organization, powers, duties, and by-laws shall be conformed to the provisions of this chapter. The by-laws of a company or battery shall fix the membership dues and provide that its commanding officer shall be president, its first lieutenant vice-president, its second lieutenant secretary, and said officers with its first sergeant and a treasurer elected by the organization at its annual meeting in December, shall be ex-officio its board of directors; that a majority of the organization shall constitute a quorum for the purpose of election and that all elections shall be by ballot and a majority vote of those voting; that the following fines shall be imposed—for absence at regular drill meeting or parade, fifty cents; for tardiness or appearance thereat without full uniform and equipments, twenty-five cents; for absence or tardiness at drill or parade especially ordered or meeting for election of officers, one dollar; for absence or tardiness at annual inspection, seven dollars;

for disobedience of standing orders or conduct prejudicial to military discipline, not more than two dollars in the discretion of the board of directors; that immediately after every drill meeting or parade the first sergeant shall report those delinquent to the board of directors with date and nature of the offense; that the secretary shall then give the delinquent at least two days' notice by mail to appear before such board at a time stated and show cause why he shall not be fined for the offense stated in such notice; that said board at the time noticed shall pass upon any excuse offered and if it finds a fine should be imposed assess the same against the delinquent; that the secretary shall at once charge any fine imposed against the account of such delinquent; that the treasurer shall immediately deposit all the funds of the organization in a bank to be designated by it, and in its name; that such funds shall be withdrawn from such bank only upon resolution of the organization or upon order of its president when approved by the regimental commander and then by the warrant of the secretary approved by the president and countersigned by the treasurer; or by a draft of the president, approved by the regimental commander; that the treasurer shall give bonds of not less than five hundred dollars, conditioned for the faithful discharge of his duties, with two sureties approved by the board; that any member of the organization receiving any moneys for it or for any member thereof shall forthwith pay the same to the treasurer or (if so directed by the president), deposit the same to the credit of the organization in a bank designated to receive its funds, except that at the annual encampment, or in actual service the president may from the camp allowance of members incur and pay the organization's share of expense of such encampment or service and pay the balance only due the members respectively to the treasurer; that the president shall also give the secretary a statement of the balance due each member after deducting such expense; that the secretary shall credit each member with such balance and after deducting all dues and fines and charges for lost property, draw his warrant in favor of such member for the balance remaining, to be approved and countersigned as in other cases; that itemized semi-annual report of receipts and disbursements of the organization showing the balance on hand shall be made by the secretary and treasurer, approved by the board and certified by the president to the regimental commander before June 10 and December 10; that all books and records shall at all times be open for inspection by the president, regimental commander and adjutant and said commander and adjutant may attend all meetings of the organization or its board or committees. Upon the dissolution of any such corporation, by muster out or otherwise, all its property shall vest in the state; but the whole or any part thereof may be conveyed by the adjutant general, acting for the state, to a similar organization of the guard formed in the same locality. (2383) ('17 c. 400 § 35)

EQUIPMENTS

[2452—]36. **Armanent, equipment and uniform of national guard**—The national guard of the United States shall, as far as practicable, be uniformed, armed and equipped with the same type of uniform, arms and equipments as are or shall be provided for the regular army. They shall be procured and issued by the proper officers as the needs of the service may require and shall be accounted for as the regulations may prescribe. (2384-82) ('17 c. 400 § 36)

[2452—]37. **Property and disbursing officer—Bond**—The governor, pursuant to federal authority, shall appoint, designate, or detail subject to the approval of the secretary of war, an officer of the national guard who shall be regarded as property and disbursing officer for the United States. He shall receipt and account for all funds and property belonging to the United States in possession of the national guard of this state and shall make such returns and reports concerning the same as may be required by the secretary of war. He shall render, through the war department, such accounts of federal funds intrusted to him for disbursement as may be required by the treasury department. Before entering upon the performance of his duties as property and

disbursing officer he shall be required to give good and sufficient bond to the United States, the amount thereof to be determined by the secretary of war, for the faithful performance of his duties and for the safe-keeping and proper disposition of the federal property and funds intrusted to his care. The said property and disbursing officer shall also be the military storekeeper of the state. (2392-67) ('17 c. 400 § 37)

[2452—]38. **Issue and distribution of arms, etc.**—Arms, accoutrements, ammunition and stores shall be issued to the proper officers of each regiment, upon requisition of the commanding officers thereof, under such regulations as the governor may prescribe. Such commanders shall cause the same to be issued to the company commanders under suitable directions. The governor may require of the accountable officers, such bonds as he deems necessary for securing the care and safety of property so issued and may allow them sufficient money to establish and maintain regimental depots, approved by him and to pay for the transportation, handling and care of such property, which allowance shall be paid out of the moneys appropriated for the purchase of supplies for the guard. (2386) ('17 c. 400 § 38)

[2452—]39. **Same—Distribution and return—Forfeiture**—The commanding officer of a company or battery receiving clothing or equipage so issued for the use of his command shall distribute the same as he deems proper, taking receipts and requiring the return of each article at such time and place as he shall direct. Every person failing to comply with such directions shall forfeit not to exceed double the price of the article withheld, which forfeiture the commanding officer may recover in a civil action. All sums so collected shall be paid into the state treasury and added to the current appropriation for the support of the guard. The proceeds of the sale or transfer of condemned and other military property shall be turned over to the state auditor and by him placed to the credit of the national guard fund to be used, under the direction of the adjutant general, in the purchase of similar property, or for other necessary expenses of the service. (2385) ('17 c. 400 § 39)

See 1917 c. 4.

[2452—]40. **Same—Sons of veterans**—The adjutant general, in his discretion, may issue to any camp of the military organization known as the "sons of veterans, U. S. A." arms and accoutrements not in use, to a number not exceeding the active membership of such camp. Some member of the camp shall give bond to the state in the sum of at least twenty dollars for each rifle, conditioned for the return in good order, on demand, of all property so issued. No such issue shall be made except on requisition of the captain of such camp approved by the division colonel. Any member of such camp who shall wilfully destroy or injure military property so issued or shall withhold the same for more than five days after its return has been requested, shall be guilty of a misdemeanor. (2387) ('17 c. 400 § 40)

DUTIES OF OFFICERS

[2452—]41. **Adjutant general—Powers and duties**—The adjutant general shall be provided with an office in the capitol, where he shall keep his office records and all accounts and papers pertaining to the militia. He shall have general supervision, under the governor, of all military property of the state and keep accounts with and supervise the accounts of all officers having the immediate control thereof. And in addition to all other duties imposed upon the adjutant general by law or by the lawful directions of the governor, he shall act as the agent of all residents of the state having claims against the United States for pensions, bounty, or back pay, arising out of or by reason of any war or federal service and prosecute such claims without charge. The present seal of his office shall be continued in use until altered by direction of the governor. At the close of each fiscal year or oftener if required by the governor the adjutant general shall render a complete financial report of all state and federal receipts and disbursements, affecting his office. (2388) ('17 c. 400 § 41)

[2452—]42. **Reports**—The adjutant general and the officers of the national guard shall make such returns and reports to the secretary of war, or to such officers as he may designate, at such times and in such form as the secretary of war may from time to time prescribe. ('17 c. 400 § 42)

[2452—]43. **Military storekeeper—Duties**—The military storekeeper shall be the armorer and property officer of the state. He shall preserve and keep in order the arms and other public property of the several departments and any camp equipage that may be placed in his care and shall account for the same through the adjutant general to the governor. (2392) ('17 c. 400 § 43)

[2452—]44. **Other officers—Powers and duties**—Except as otherwise provided in this chapter, all officers of the guard shall have the same powers and perform the same duties as officers of similar rank and position in the army of the United States. They are authorized to administer oaths in all matters connected with the service. (2393) ('17 c. 400 § 44)

TRAINING

[2452—]45. **Discipline to conform to that of regular army**—The discipline (which includes training) of the national guard shall conform to the system which is now or may hereafter be prescribed by the congress of the United States. (2363–91) ('17 c. 400 § 45)

[2452—]46. **Training**—Each organization shall assemble for drill and instruction, including indoor target practice and participate in encampments, maneuvers and other exercises, including outdoor target practice at such times and places and for such periods as may be prescribed by the governor in accordance with the requirements of the federal law. (2394–2397–92) ('17 c. 400 § 46)

[2452—]47. **Rifle and gun practice—Competing teams, etc.**—The governor may establish special camps for advanced instructions in rifle and gun practice to be attended by officers and men who have attained a prescribed standard of marksmanship and who are selected for the purpose under suitable rules. From the participants who develop unusual proficiency therein, rifle and gun teams may be formed, which, with the approval of the adjutant general, may compete with like teams in or from other states under rules approved by him. The pay and allowance of officers and men while attending such practice or competition shall be at the rate prescribed for actual service. But no more than three thousand dollars shall be expended in any one year for all the purposes of this section. (2395) ('17 c. 400 § 47)

[2452—]48. **Encampments—Field maneuvers—Additional pay**—The commander-in-chief shall order the national guard into camp each year for such period as he may direct. He may, in his discretion, order such organizations as he may deem proper, to parade for purposes of drill, review, or escort duty and prescribe all regulations and requirements therefor. The commander-in-chief may also provide for the participation of the national guard, or any portion thereof, in encampments or field maneuvers at such places as may be designated by the war department pursuant to any act of congress; and in such case the officers and the enlisted men attending the same shall receive, in addition to the pay and subsistence provided by the federal laws and regulations, the difference between such federal pay and state pay as provided by the military code for active service. (2397) ('17 c. 400 § 48)

[2452—]49. **Inspections**—Whenever so ordered by the governor, the inspecting officer shall inspect every branch of the service and report the results thereof, giving the number of troops present, the condition of their arms, accoutrements and clothing, their proficiency in drill and such other information as may be required of or deemed proper by him. There shall be at least one inspection annually, at such time and place as the governor shall designate, at which the several organizations shall be exercised by their sev-

eral commanders and be carefully counted by the inspection officer. A roll of each company, battery and headquarters, certified by the commander thereof, shall be furnished prior to the inspection, showing the number of drills and other exercises in which each member has participated during the preceding twelve months. The forms and mode of inspection shall be prescribed by the adjutant general and all directions given by him in reference to the inspection shall be obeyed by the several officers of the guard. (2391) ('17 c. 400 § 49)

[2452—]50. **Care of camp grounds, etc.—Eminent domain**—The adjutant general shall have charge of the camp grounds and military reservations of the state, keeping in repair all state buildings and other improvements thereon, including water pipes laid by the state on highways leading thereto and of all military property of the state connected with said grounds. He may make such further improvements thereon as the good of the service requires, but the expenditure of the state for all the purposes aforesaid shall not exceed three thousand dollars in any one year. Private property may be acquired by condemnation, upon the application of the adjutant general, for camp grounds, rifle ranges and other military purposes. All damages, cost and expense incurred in condemning such property shall be paid by the state treasurer, upon certificate of the adjutant general and warrant of the state auditor, from any unexpended balance of the military fund after meeting the demands of the national guard. (2398) ('17 c. 400 § 50)

[2452—]51. **Molestation of guard, etc.**—Any person who interrupts, molests or insults by abusive words or behavior, or obstructs any officer or soldier of the national guard while on duty, either parade, drill or meeting for military improvement, may be immediately put and kept under guard until said duty is concluded, by the officer in command. Such officer may turn him over to any peace officer of the city or place where such drill parade or meeting is being held and such peace officer shall thereupon deliver such offender for examination and trial before any court having jurisdiction. Any person violating the provisions of this section shall be guilty of a misdemeanor. (2399) ('17 c. 400 § 51)

[2452—]52. **Right of way**—Organizations of national guard parading or on any authorized duty shall have the right of way on any street or highway through which they may pass against all, except carriers of the United States mail, fire engines and the police. (2400) ('17 c. 400 § 52)

PAY AND ALLOWANCES

[2452—]53. **Per capita allowance—Military fund**—The state shall pay annually to the officers hereinafter specified, seven dollars for each officer, non-commissioned officer, musician and other enlisted men of their respective organizations reported by the inspecting officer as fully uniformed and equipped. Said money shall be known as the military fund and shall be used only for the purchase of uniforms, care of armories and other necessary expenses of the regiment, company or battery. But no such payments shall be made on account of any company or battery whose number, present at the inspection or satisfactorily accounted for, was below forty-six officers and enlisted men, or which has been mustered within thirty days before the inspection, or had held fewer than the required number of drills; nor on account of any company, officer or man not mustered at least thirty days before the inspection or who has not drilled or performed other military duty on an average of at least thirty days before the inspection or who has not drilled or performed other military duty on an average of at least twice a month during his membership, exclusive of camp duty and active service. Such payments on account of a headquarters, company or battery or detachment, shall be made to its commanding officer. All such payments shall be made upon the requisition of the officer entitled to receive the same, approved by the adjutant general. Any balance of said fund shall be paid over by the officer receiving it to his successor. (2401) ('17 c. 400 § 53)

[2452—]54. **Allowance for care of property**—There shall be paid to each quartermaster sergeant and chief mechanic, including quartermaster sergeants of headquarters companies, machine gun companies, supply companies and sanitary detachments, in charge of state or government property, the sum of ten dollars per month upon the certificate of his commanding officer that he has faithfully performed the duties of his office and accounted for all property entrusted to his care. Such payments shall be made quarterly upon vouchers approved by the adjutant general. Provided, however, that where two or more organizations are stationed in the same city and the regimental commander deems it for the best interest of the service, two or more allotments for the pay of quartermaster sergeants and chief mechanics under this section may be combined and paid to one or more men, designated by the regimental commander, whose duties in the care of public property shall be correspondingly increased. (2401) ('17 c. 400 § 54)

[2452—]55. **Hire of artillery horses**—To the commanding officer of each battery of artillery there shall also be paid by the state, annually, at or before the encampment, nine hundred and fifty dollars for horses and stable hire and for the care and management thereof, including forage, medicines and stable help and one hundred dollars to the regimental commander for the same purposes. Provided, however, that where two or more batteries are stationed in the same city or in contiguous cities and the regimental commander deems it for the best interest of the service, he may designate an officer to supervise the care of the horses of two or more batteries and the management of the joint stables and the allowances of such batteries under this section will thereupon be paid to the officer so designated and be disbursed by him for the purposes above named with the approval of the regimental commander. (2402) ('17 c. 400 § 55)

[2452—]56. **Camp allowances**—For each day's attendance at an encampment, or maneuver ordered by the governor, including the time necessarily consumed in travel, the enlisted men of the national guard shall receive pay at the rate now or hereafter provided for enlisted men of similar grade and term of enlistment in the regular army of the United States and in addition thereto the sum of one dollar per day besides transportation and shelter. If subsistence is furnished by the state the cost thereof, not to exceed fifty cents per day, shall be deducted from the pay of each enlisted man. The value of articles issued to any member of a company or battery and not returned in good order on demand, as well as his proportionate share of the subsistence of the company and other legal fines or forfeitures may be deducted from the member's pay by his commanding officer. Provided, that such payment shall be made only to the men present in full uniform and on duty at least five days. (2403) ('17 c. 400 § 56)

[2452—]57. **Pay for actual service—How audited and paid**—When called into active service by the governor, each enlisted man of the national guard shall be paid by the state the sum of fifty cents per day in addition to the pay and allowance provided in the preceding section for encampments and maneuvers, together with subsistence. If an artillery force be so employed, the necessary cost of horse hire and forage shall be paid by the state. In all such cases the pay rolls and expense bills shall be audited by the state auditor, attorney general and adjutant general, and paid upon their certificate out of the general revenue fund, and the necessary sum is hereby appropriated. (2404) ('17 c. 400 § 57)

[2452—]58. **Pay of officers—Allowances**—Every commissioned officer of the national guard not salaried as such, shall receive from the state, while engaged in any service ordered by the governor, pay and allowance at the rate paid or allowed by law to officers of similar rank in the United States army. There shall also be paid annually to officers in actual command of troops, for incidental expenses, the following sums: to the brigade commander, and to the commanding officer of each regiment, two hundred and fifty dollars; to the commanding officer of a separate battalion, one hundred and fifty dollars; to the commanding officer of (each battalion, company or battery, the

assistant adjutant general of the brigade, each regimental adjutant and the adjutant of) a separate battalion, one hundred dollars. Where the officers of the national guard are convened by the governor at an annual meeting of instruction, other than camp or active service, or where they are detailed under orders from regimental headquarters for the purpose of holding a quarterly inspection outside of their own station, they shall be allowed for traveling and incidental expenses, the sum of three dollars per day, not to exceed two days, in addition to transportation. (2405) ('17 c. 400 § 58)

[2452—]59. **Payments, how made**—All payments provided for in the four preceding sections shall be made to the adjutant general by auditor's warrant issued upon his requisition, approved by the governor, or by like warrant to the officers entitled thereto upon their requisition approved by the adjutant general. The adjutant general, shall immediately pay and distribute the same to and among the several officers and commands entitled thereto; and the receipt of the commanding officer of a regiment, for the aggregate due to the various organizations, officers, and men thereof shall discharge him from liability. Any officer receiving such payments from the adjutant general shall be responsible for their proper distribution or use. (2406) ('17 c. 400 § 59)

[2452—]60. **Salaries, etc.—Assistants**—The adjutant general shall receive a yearly salary of thirty-five hundred dollars, and may employ a stenographer at the cost of the state of not more than twelve hundred dollars per year. He may appoint an assistant at a salary of not exceeding sixteen hundred dollars per year, and a clerk at a yearly salary of twelve hundred dollars, who shall perform such duties as he may prescribe. He may also employ, from time to time, other necessary office assistants, for whose compensation provision shall have been specifically made by law. The salary of the military storekeeper shall be thirteen hundred and twenty dollars per year. All salaries and compensation herein referred to shall be paid by the state in monthly installments. In case of war, riot or insurrection such additional office help as is necessary may be employed, same to be paid from the amount appropriated for the maintenance of the national guard. (2409) ('17 c. 400 § 60)

[2452—]61. **Appropriations**—The appropriations made for the purpose of carrying out the provisions of this act shall not lapse at the end of any fiscal year; but all unexpended balances shall be added to the appropriation made for the ensuing year. All disbursements from such appropriation shall be made upon auditor's warrants issued upon vouchers approved by the adjutant general. (2407) ('17 c. 400 § 61)

[2452—]62. **Civil war muster rolls**—The adjutant general shall keep compiled, from the original muster rolls in his office and such additional sources as he can command, a complete alphabetical list of the Minnesota volunteers in the civil war and shall include therein the military history of each man as shown by such rolls. Thereafter the original rolls shall be placed in suitable metal boxes for safekeeping, and the compilation so made shall be used in their place for all practicable purposes. (2408) ('17 c. 400 § 62)

MILITARY OFFENSES AND TRIALS

[2452—]63. **Military offenses defined**—A military offense includes any delinquency or violation of the laws, rules, regulations or orders governing the militia or national guard, as well as those governing the army and navy of the United States, applicable to the militia or national guard, and the offenses herein enumerated shall be defined as similar offenses are defined in the articles of war and laws and regulations governing the United States army. (2410) ('17 c. 400 § 63)

[2452—]64. **Military offenses enumerated**—The following delinquencies are hereby declared to be military offenses and the delinquents will be punished by court-martial as hereinafter provided:

1. Wilful disobedience of orders, or aiding or abetting others therein.
2. Insult or disrespect to superiors.
3. Mutiny, desertion, or cowardice.

4. Drunkenness on duty.
5. Neglect of duty, or leaving post or command.
6. Making a false report, muster, account, certificate, or return.
7. Conduct to the prejudice of good order and military discipline.
8. Oppression of any under his command.
9. Embezzlement or misappropriation of military or company funds, or wrongful conversion of military property.
10. Wasting, injuring or destroying military property.
11. Conduct unbecoming an officer and a gentleman.
12. Wrongfully disclosing or making improper use of a watchword or parole.
13. Disobedience of standing orders.
14. Fraudulent enlistment, or aiding or abetting others therein.
15. Removing or secreting uniform or other military property without permission from competent authority.
16. Wearing uniform or equipment while not on duty without permission from competent authority.
17. Selling or disposing of military property without lawful authority.
18. Non-attendance or tardiness at any drill, parade, encampment, inspection, or other duty ordered by competent authority.
19. Absence, without leave, from company station (each day).
20. Conduct unbecoming a soldier, or prejudicial to good order or military discipline.
21. Any other violation of the laws, regulations, or orders governing the national guard, as well as articles of war governing United States army, consistent with this act. (2410-2413) ('17 c. 400 § 64)

[2452—]65. **Injury, etc., of military property**—Arms, uniforms, and accoutrements issued by the state, or purchased with military funds, shall be used only by members of the guard, and by them only in the discharge of military duty. Every person, whether a member of the guard or not, who shall wilfully or wantonly injure, destroy, withhold, sell or dispose of any article so issued, or refuse to deliver or pay for the same upon lawful demand, shall be guilty of a misdemeanor. (2414) ('17 c. 400 § 65)

[2452—]66. **System of courts-martial for national guard**—Courts-martial in the national guard shall be of three kinds, namely, general courts-martial, special courts-martial, and summary courts-martial. They shall be constituted like, and have cognizance of the same subject, and possess like powers, except as to punishments, as similar courts provided for by the laws and regulations governing the army of the United States, and the proceedings of courts-martial of the national guard shall follow the forms and modes of procedure prescribed for said similar courts. (2415, 2417, 2421) ('17 c. 400 § 66)

[2452—]67. **Courts-martial in time of war**—All laws, rules and regulations governing the army of the United States, relating to courts-martial and the trial and punishment of military offenses, shall apply to and in all things govern the militia and national guard of this state when in actual service, in time of war, insurrection, invasion, riot or public danger; otherwise, they shall be in force as far as consistent with the provisions of this chapter. (2422) ('17 c. 400 § 67)

[2452—]68. **General courts-martial**—General courts-martial of the national guard may be convened by orders of the President of the United States, or of the governor, and such courts shall have the power to impose fines not exceeding \$200; to sentence to forfeiture of pay and allowances; to a reprimand; to dismissal or dishonorable discharge from service; to reduction of non-commissioned officers to the ranks; or any two or more of such punishments may be combined in the sentences imposed by such courts. (2417, 2439, 2440) ('17 c. 400 § 68)

[2452—]69. **Special courts-martial**—The commanding officer of each garrison, fort, post, camp, or other place, brigade, regiment, detached battalion, or other detached command, may appoint special courts-martial for his com-

mand; but such special courts-martial may in any case be appointed by superior authority when by the latter deemed desirable. Special courts-martial shall be [have] power to try any person [according] to military law, except a commissioned officer, for any crime or offense made punishable by the military laws of the state or of the United States, and such special courts-martial shall have the same powers of punishment as do general courts-martial, except that fines imposed by such courts shall not exceed \$100. (2418, 2439, 2440) ('17 c. 400 § 69)

[2452—]70. Summary courts—The commanding officer of each garrison, fort, post, or other place, regiment or corps, detached battalion, company, or other detachment of the national guard may appoint for such place or command a summary court to consist of one officer, who shall have power to administer oaths and to try the enlisted men of such place or command for breaches of discipline and violations of laws governing such organizations; and said court, when satisfied of the guilt of such soldier, may impose fines not exceeding \$25 for any single offense; may sentence non-commissioned officer to reduction to the ranks; may sentence to forfeiture of pay and allowances. The proceedings of such court shall be informal, and the minutes thereof shall be the same as prescribed for summary courts of the army of the United States. (2419, 2421, 2439, 2440) ('17 c. 400 § 70)

[2452—]71. Imprisonment—All courts-martial of the national guard including summary courts, shall have power to sentence to confinement in lieu of fines authorized to be imposed: Provided, that such sentence of confinement shall not exceed one day for each dollar of fine authorized. (2441) ('17 c. 400 § 71)

[2452—]72. Confinement in guard house—Whenever the national guard, or any part thereof, is assembled for instruction, encampment or other duty, in time of peace, all military courts may, in lieu of or in addition to any of the fines and penalties provided in this act, sentence offenders to confinement in any guard house or other place of confinement to be designated by the reviewing authority, for a period not to exceed the limit of such service, encampment or duty. (2442) ('17 c. 400 § 72)

[2452—]73. Dismissal of officers—No sentence of dismissal from the service or dishonorable discharge, imposed by a national guard court-martial, shall be executed until approved by the governor. (2443) ('17 c. 400 § 73)

[2452—]74. Disposition of fines—The proceeds of all fines shall be paid to the captain of the company or battery of which the accused is a member, and if the accused is a regimental officer or non-commissioned officer, to the commanding officer of such organization, for the benefit of the military fund of such company, regiment or organization. And all costs of prosecution shall, in the first instance, be paid out of such fund; and regimental commanders may, by an order, compel such payment, when the company fails or neglects to do so within a reasonable time. (2423) ('17 c. 400 § 74)

[2452—]75. Powers of military courts—Presidents of courts-martial and summary court officers shall have power to issue warrants to arrest accused persons and to bring them before the court for trial whenever such persons shall have disobeyed an order in writing from the convening authority to appear before such court, a copy of the charge or charges having been delivered to the accused with such order, and to issue subpoenas and subpoenas duces tecum and to enforce by attachment attendance of witnesses and the production of books and papers, and to sentence for a refusal to be sworn or to answer as provided in actions before civil courts. All military courts shall have power to administer oaths; to hear and determine cases; and, when satisfied of the guilt of the accused, to adjudge the punishment to be inflicted and, when approved, to enforce the sentence as hereinafter provided. (2432) ('17 c. 400 § 75)

[2452—]76. Immunity of members of military court—No action or proceeding shall be maintained against any member of a military court, officer or agent acting under its authority or reviewing its proceedings, on account of

the imposition of a fine or penalty or for the execution of a sentence on any person. (2452) ('17 c. 400 § 76)

[2452—]77. **Courts of inquiry**—Courts of inquiry, to consist of from one to three officers, may be instituted by the governor for the purpose of investigating the conduct of any officer, or any facts made the subject of military complaint. Such court of inquiry shall, without delay, report a statement of facts and, when required, the evidence adduced and an opinion thereon to the governor, who may, in his discretion, thereupon order a court-martial for the trial of the officer whose conduct has been inquired into. (2416) ('17 c. 400 § 77)

PROCEDURE OF COURTS-MARTIAL

[2452—]78. **Charges**—Charges shall be preferred in writing by a commissioned officer, and shall contain the name of the offense charged and a reference to the particular section of the military code claimed to have been violated. (2424) ('17 c. 400 § 78)

[2452—]79. **Specifications**—Charges shall be accompanied by specifications, containing a brief statement of the facts constituting the offense together with the date and place of its commission. (2425) ('17 c. 400 § 79)

[2452—]80. **Charges to be approved**—No charges shall be acted upon until approved by the commanding officer of the regiment of which the accused is a member, or by the brigade commander. (2426) ('17 c. 400 § 80)

[2452—]81. **Arrest**—Officers and enlisted men against whom charges may be preferred or contemplated, may be placed in arrest and if enlisted men, in confinement, at the discretion of their commanding officer. Provided, however, that such arrest shall cease at the expiration of twenty days unless a copy of the charges is served as hereinafter provided. (2427) ('17 c. 400 § 81)

[2452—]82. **Summons**—Upon approval of the charges and specifications, a copy thereof, together with a summons signed by the presiding officer of the court or the commanding officer of the accused, and requiring said accused to appear before said court at the time and place therein designated, and answer the charges thereto annexed, shall be served upon him, by delivering to him, or leaving at his last known place of abode or business, a true copy thereof, or by mailing the same to him at least five days before the date set for his appearance. The appearance of the accused shall waive any irregularity in the service of such papers. (2428) ('17 c. 400 § 82)

[2452—]83. **Warrant**—Upon proof of service of such summons or of mailing the same, and default of the appearance of such accused at the time and place designated for trial, the president or officer of the court shall issue his warrant for the arrest of the delinquent directed to the sheriff or any constable of the county, who shall forthwith execute said warrant and make proper return thereof, and produce to the said court the body of the accused, if within said county, and retain the custody thereof until the conclusion of the trial, unless sooner discharged by the order of the court. The court, in its discretion, may also appoint some other suitable person to execute said warrant. (2429) ('17 c. 400 § 83)

[2452—]84. **Procedure**—The forms, practice and procedure of courts of inquiry, general and special courts-martial, as well as of summary courts, shall conform as nearly as consistent with the provisions of this act to the procedure of similar courts in the army of the United States. In summary courts evidence of statements will not be recorded, and a judge advocate may be dispensed with. (2430-102) ('17 c. 400 § 84)

[2452—]85. **Contempts**—Any person who shall be guilty of disorderly, contemptuous or insolent behavior, or use any insulting or contemptuous or indecorous language or expressions to or before any military court, or any member of either of such courts in open court, intending to interrupt the proceedings or to impair the authority of such court, may be committed to the

jail of the county in which said court shall sit, by warrant under the hand of the president of such court. The warrant shall be directed to the sheriff, or any constable or marshal of any such county, or any marshal of the court, and shall briefly state the offense adjudged to have been committed, and shall command the officer to whom it is directed to take the body of such person and commit him to the jail of the county, there to remain without bail in close confinement for a time to be limited, not exceeding ten days and until the officer's fees for committing and the jailor's fees be paid. Such officer shall obey such warrant and keep the person committed thereby until the expiration of the time mentioned in the warrant, and until the officer's and jailor's fees be paid, or until the offender shall be discharged by due course of law, unless sooner discharged by a judge of the court of record in the same manner and under the same rules as in cases of imprisonment under process of contempt from a civil court of record. (2433) ('17 c. 400 § 85)

[2452—]86. Presiding officer of military court—Vacancies—Members to be in uniform—Sittings of court—The president of every military court shall be the member of the court highest in grade and rank. Whenever any military court consists of one person, he shall be deemed the president thereof within the meaning of this chapter. In the absence of the president of any military court, the senior officer shall preside, with all the powers of president. All the members of such court shall, when on duty, be in uniform. The court may sit without regard to hours and may adjourn from time to time, as may be necessary for the transaction of business. Any vacancy in any military court may be filled by the officer who ordered the court, or his successor in command. (2434) ('17 c. 400 § 86)

[2452—]87. Irregularities—The proceedings of military courts shall not be vitiated by reason of mere irregularity, want of form or other technical defect, unless it is affirmatively made to appear, upon review or appeal, that the accused has been denied a fair hearing and has been materially injured thereby. In all cases where the sentence of a military court has been approved by the reviewing authority, the jurisdiction of said court and the legality of all its proceedings shall be presumed and on approval of such sentence, or in any civil proceedings, the burden of rebutting such presumption by competent evidence shall rest with the appellant or contestant in any such appeal or civil proceedings. (2435) ('17 c. 400 § 87)

[2452—]88. Evidence—Military courts are not bound by the technical rule of evidence prevailing in civil tribunals and may depart therefrom when in their opinion the exigencies of the case, the best interests of the service or the ends of justice demand it. Copies of all general and special orders may be received in evidence when attested by the signature of any officer having custody of an official copy of such order; and in case a written copy of such order cannot be procured without delay or inconvenience, oral testimony as to its contents may be received and all military courts may take judicial notice of the signature and handwriting of any commissioned officer of the national guard. (2436) ('17 c. 400 § 88)

[2452—]89. Judge advocates—The powers and duties which are conferred upon the judge advocates by the laws and regulations governing the United States army, are hereby conferred on officers of the national guard of this state appointed or detailed for similar duty. Unless otherwise ordered the judge advocate may remain in attendance throughout the deliberations, findings and sentence of the court. (2437) ('17 c. 400 § 89)

[2452—]90. Findings—The findings and other rulings of a military court are decided by a majority vote. When the court is equally divided the vote will be recorded as "not guilty." (2438) ('17 c. 400 § 90)

[2452—]91. Review and approval—The record and sentence of all cases tried by court-martial shall be transmitted for review to the officer convening such court. The reviewing officer shall approve or disapprove the sentence and may modify, mitigate or remit the same or may return the record for

revisions to correct defects or supply omissions. His final action shall be endorsed on the record or expressed in orders, a copy of which shall be annexed thereto. If further action by the court is necessary to enforce the sentence or any part thereof, the record and sentence with the action of the reviewing officer thereon shall be returned to the court for further proceedings. (2443) ('17 c. 400 § 91)

[2452—]92. **Unpaid fines**—In default of payments of any fine, forfeiture, or costs, imposed by any military court after approval of sentence by the reviewing authority, the offender shall be committed to any county jail designated by said court for a period equal to one day for each dollar of fine imposed. (2441) ('17 c. 400 § 92)

[2452—]93. **Warrant of commitment**—If the fine and costs imposed by the court are not paid to the presiding officer, judge advocate or other officer authorized to receive the same, within five days after notice to the accused or promulgation of the orders approving the sentence, the president or other officer of the court shall issue his warrant of commitment of such delinquent offender, commanding the sheriff or any constable to whom such warrant is delivered to forthwith take the body of said offender and convey him to the common jail of the county designated in said warrant, there to remain confined during the term of said sentence as set forth in said commitment or until sooner discharged by competent authority and to make a due return of his doings thereon. Such warrant of commitment may be substantially in the following form.

The State of Minnesota:

To the sheriff or any constable and to the keeper of the common jail of the county of

Greeting:

Whereas of (company or battery) (regiment) of Minnesota national guard, has been duly tried by court-martial organized according to law and upon such trial was found guilty of (charge), and was, on the day of 19.... duly sentenced to (sentence) and said sentence having been approved by competent authority and said offender having failed to pay said fine;

Now, therefore, you, the said sheriff or constable, are hereby commanded by authority of the state of Minnesota, to forthwith take the body of the offender hereinbefore named and convey him to the common jail of your county and deliver him to the keeper thereof and said keeper is hereby commanded to receive the said offender into his custody within said jail and to keep him in confinement therein for the period of days from the date of receipt or until sooner discharged by competent authority; and each of said officers is further required to forthwith make due return of this warrant and of his doings thereunder.

Dated at this day of 19....

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.....
Presiding at said court, (2444)

('17 c. 400 § 93)

[2452—]94. **Duties of jailers**—The keepers and wardens of all county jails are required to receive and confine all military offenders when delivered by such sheriff or constable, under the proper certificate of commitment of a military court, for and during the term of sentence as set forth in said commitment. (2445) ('17 c. 400 § 94)

[2452—]95. **Duties of civil officers**—Any sheriff, constable, jailer, marshal or other civil officer named in this act, who shall neglect or refuse to obey, execute or return the lawful warrant or other process of a military court, or make a false return thereon, shall be guilty of a misdemeanor and in

addition to the penalties attaching thereto, shall forfeit fifty dollars for each offense or neglect of duty the same to be recovered in a civil action against such officer and his official sureties by the regimental or other commander in whose jurisdiction the court warrant or mandate has been disobeyed, for the benefit of the military fund of such regiment or other unit. (2446) ('17 c. 400 § 95)

[2452—]96. **Fees of civil officers**—Civil officers executing the warrants or process of a military court shall receive, as compensation therefor, the fees allowed by law for like service in the civil courts, the same to be taxed by such court and paid out of the military fund of the company of which the accused is a member. But no fees shall be allowed or paid to such officers unless an itemized statement thereof is endorsed on and forthwith returned with such warrant or process to the court issuing the same. (2447) ('17 c. 400 § 96)

[2452—]97. **Return of record**—In all cases military courts shall return the records of their proceedings after sentence to the reviewing authority within thirty days after promulgation of said sentence. And upon final determination of the case such record shall be transmitted to the adjutant general for safe keeping. (2451) ('17 c. 400 § 97)

[2452—]98. **Repeals**—All acts and parts of acts inconsistent with this act are hereby repealed. Sections 2351 to 2452, both inclusive of the General Statutes of Minnesota, 1913, are specifically repealed. ('17 c. 400 § 98)

See 1917 c. 4.

ARMORIES

2464. **Same—Appropriation for armories—Bonds, etc.**—To every company and battery of the Minnesota national guard, now or hereafter organized, which shall have first deposited with the state treasurer, at least the sum of one thousand dollars (\$1,000) as evidence of good faith, and shall have conveyed or cause to be conveyed to the state of Minnesota, by good and sufficient deed of warranty, and free of encumbrances, the title to a site for an armory, which site shall have first been approved by said board, there is hereby appropriated the sum of fifteen thousand dollars, (\$15,000.), which together with the said deposit shall be used for the purpose of building, erecting and equipping an armory building on said site: Provided, that two or more organizations stationed in one or more cities or villages may combine the appropriations available for each under this act, and erect a joint armory on a common site situated wholly in either or partly in each such city or village, if the board of armory supervisors shall deem it expedient; Provided, further, that in case two or more organizations entitled thereto have heretofore, or may hereafter, combine, and shall have become entitled to such joint appropriations and to erect a joint armory, on a common site, and such site has been duly conveyed to the State of Minnesota, and thereafter any additional organization is, or additional organizations are, regularly formed and stationed in any city or village wherein any organization has so joined in such common site and armory, and it shall be desirable and practicable, and said board shall deem it expedient, to have such new organization join in such common armory, said board may allow such new organization to join with such other organizations in such common armory, on such common site, and may allow an additional appropriation for such armory on account of such new organization so joining therein, on the furnishing by such new organization of the sum of one thousand dollars, (\$1,000) as hereinbefore provided for, without the necessity of furnishing an additional site to the State of Minnesota; and provided further, that said board shall designate as near equally as possible from the several military organizations of the national guard, which of them shall receive aid in any one year, taking into consideration the proficiency of the organization asking for aid and its needs, and giving preference to organizations not already provided with a suitable armory.

Any city or village, or two or more cities or villages jointly, in which an armory has been heretofore, is now or may hereafter be erected or authorized under the provisions of this act, may acquire and convey to the state of Minnesota, a site, and raise and appropriate money and funds in aid of the construction, repair or improvement thereof, and to that end may issue bonds payable not more than twenty years after their issue and bearing interest at a rate not exceeding five per cent. per annum, and may deposit such money and funds and the proceeds of the sale of such bonds with the state treasurer to the credit of the proper construction fund, and may make such further provision for the maintenance and improvement of such armory as may be deemed necessary; provided, that, whenever bonds have been heretofore issued by any city or village for any of the foregoing purposes, and the validity of such bonds is not now in question in the courts, the same are hereby validated and hereby declared to be legal obligations of any city or village issuing the same; and provided further that whenever the board deems it expedient, and in furtherance of the purposes of this act, it may purchase and finish armories already built or partly built, deducting, however, from the purchase price, the appraised value of the site. ('13 c. 226 § 2, amended '15 c. 118 § 1)

NAVAL MILITIA

2473. Organization—Battalion—The naval militia shall consist of one battalion not to exceed eight divisions or companies. (Amended '15 c. 353 § 1)

2474. Composition of militia under jurisdiction of secretary of navy—The naval militia shall be composed of such officers, warrant officers, petty officers and enlisted men as the secretary of the navy shall prescribe for a battalion and for a division of the naval militia. (Amended '15 c. 353 § 2)

2475. Number and grades—For the purpose of conforming the naval militia more closely to the organization of the Naval Militia of the United States as the same may be, from time to time, prescribed by the secretary of the navy and not otherwise, the governor may fix the number and grade of officers, warrant officers, petty officers and enlisted men therein. (Amended '15 c. 353 § 3)

CHAPTER 13

ROADS

DEFINITIONS—POWERS AND DUTIES OF MUNICIPALITIES

2488. Scope of act—State roads, county roads, and town roads defined—125-325, 146+1110; note under § 2605.

2489, subd. 3. Width of bridges and culverts—

Cited (122-126, 142+20).

161+506.

This section has no application to a street dedicated by plat (126-456, 148+501). Dedication, §=51.

2490. State roads—All state roads shall be constructed, improved and maintained by the counties under rules and regulations to be made and promulgated by the commissioner of highways. ('13 c. 235 § 3, amended '17 c. 119 § 4)

2491. County roads—All county roads shall be established, constructed and improved by the several county boards. The county board of any county may appropriate from its road and bridge fund to any town in its county,

such sums of money as are available and which it deems advisable to aid such towns in the construction and maintenance of roads therein; provided, that in counties having a population of one hundred fifty thousand (150,000) inhabitants or over, such county aid may be expended in accordance with the provisions of Chapter 164, Laws 1905, as amended by Chapter 208, Laws 1909 [2584-2586]. The town through which any county road may pass shall maintain and keep it in repair. Provided, however, that in counties having a population of one hundred fifty thousand inhabitants (150,000) or over and which now have or hereafter may have a county superintendent of highways or other officer to superintend the construction or improvement of roads within its confines, the several towns thereof shall have no jurisdiction over county roads. ('13 c. 235 § 4, amended '15 c. 116 § 1)

Mandamus to compel repair of public road (see 133-160, 157+1092). Mandamus, ~~§~~ 94, 151(2).

2492. Town roads—

Mandamus to compel repair of public road (see 133-160, 157+1092). Mandamus, ~~§~~ 94, 151(2).

2493. Road beyond boundaries of municipality—Crushed rock—The council of any village, borough or of any city of the fourth class or the town board of any town, may appropriate and expend such reasonable sums as it may deem proper to assist in the improvement and maintenance of roads lying beyond its boundaries and leading into it, and of bridges thereon, whether they are within or without the county in which it is situated. Such municipalities may also engage in the manufacture of crushed rock for use on public highways, and said crushed rock may be conveyed, by gift or sale, to other municipalities for such use. ('13 c. 235 § 6, amended '15 c. 116 § 1½)

Mandamus to compel repair of public road (see 133-160, 157+1092). Mandamus, ~~§~~ 94, 151(2).

2494. Contracts—Subdivision 1. Bridges—No contract for the construction or erection of a bridge shall be entered into by any county, town, village or city of the fourth class where the contract price of such bridge exceeds the sum of five hundred dollars (\$500); unless plans and specifications for the proposed bridge shall be filed with the county auditor, in case of county contracts, or with the town, village or city clerk respectively, in case a contract is to be entered into by a town, village or city of the fourth class, at least three weeks prior to the time when such bids are to be considered and the contract entered into, nor shall any contract be let without first advertising for bids or proposals therefor in a legal newspaper, published in the county. Such advertisement shall be published once a week for three successive weeks, the last publication to be made at least ten (10) days and not more than thirty (30) days before (preceding) the time fixed for receiving bids and letting the contract, and shall state the time and place of receiving bids and awarding the contract, and shall refer to the fact that plans and specifications are on file in the office hereinbefore specified.

At least three weeks before the time fixed for receiving bids, the county auditor, in case of a county contract, and the clerk of the town, village or city in case of a town, city or village contract, as the case may be, shall mail a copy of such printed notice, by registered mail, to the commissioner of highways. Such commissioner shall file all such notices so received by him, and the same shall be subject to inspection by all persons interested therein. The commissioner of highways shall, from time to time, cause printed lists of such notices to be made and shall, without charge therefor, furnish copies thereof to interested persons on application. ('13 c. 235 § 7 subd. 1, amended '15 c. 160; '17 c. 119 § 5)

STATE HIGHWAY COMMISSION—STATE ROADS AND AID**2496. [Superseded.]**

See §§ [2496—]1 to [2496—]2.

[2496—]1. **State highway commission abolished—Appointment of commissioner of highways—To exercise powers and duties heretofore devolved on commission—Highway department—Deputy highway commissioner, etc.**—That the state highway commission be and it is hereby abolished and the office of each of the persons constituting such commission is also hereby likewise abolished; that forthwith upon the passage of this act the Governor of the state is authorized and directed to appoint a commissioner of highways upon whom shall devolve all the powers, duties, rights, privileges and obligations heretofore imposed upon, granted to and vested in the state highway commission under the laws of this state, and especially chapter 235, Laws 1913, as amended by chapter 116, Laws 1915 [2488–2578]; it being the intention hereof to create the office of commissioner of highways; provide for the appointment of an incumbent thereof and that such person as such commissioner of highways shall hereafter exercise the powers and privileges and perform the duties heretofore devolved upon the state highway commission, and that except as hereinafter provided, that such commissioner of highways, shall hereafter continue and carry on the governmental work heretofore carried on by said state highway commission and that such officer shall be the successor of said state highway commission and shall take over the office equipment and organization thereof and continue the same, with power and authority, however, to make such changes therein and the personnel thereof, and the compensation of the present officers and employees thereof as to such commissioner of highways may seem desirable. Such organization shall be known and designated as the highway department.

The offices of "Secretary of the Highway Commission" and "State Engineer" are hereby abolished. The commissioner of highways shall preserve the records of the state highway commission as heretofore constituted and shall have the custody thereof. He shall cause a record of his official acts and determinations, which shall be denominated orders, to be made and preserved in his office. He shall appoint and may at pleasure remove, a deputy highway commissioner, which office is hereby created. The person so appointed shall be an experienced road builder and engineer. Such deputy shall have charge under the general supervision and control of the commissioner of highways, of the technical work of the assistant engineers. The compensation of such deputy commissioner shall be fixed and determined by the commissioner of highways and a certified copy of the order so fixing such compensation shall be filed with the state auditor; provided, however, that the salary of said deputy commissioner shall not exceed four thousand dollars (\$4000.00) per annum.

All rules and regulations heretofore promulgated by the state highway commission and in force at the time of the passage of this act shall thereafter continue in full force and effect as rules and regulations of the commissioner of highways until such time as the same shall be revoked or altered by him. ('17 c. 119 § 1)

Section 30 repeals inconsistent acts, etc.

[2496—]2. **Commissioner of highways—Term—Salary—Bond—Seal—**The office of the commissioner of highways, the incumbent whereof shall have the powers, duties and privileges herein declared, is hereby created; the term of such office shall be six years and the Governor of the state forthwith upon the passage of this act, shall appoint a suitable person thereto. The commissioner of highways may be removed from the office by the Governor for like cause and upon substantially the same proceedings as is prescribed by law with reference to the removal of county officers.

The commissioner of highways shall devote his entire time to the performance of his official duties and shall receive as compensation therefor a yearly salary of forty-five hundred dollars.

Such commissioner of highways shall before entering upon the performance of his official duties, give bond to the state, to be approved by the Governor, in the penal sum of \$25,000, conditioned for the faithful performance of his duties. If a surety company bond is given, the premium thereon may be paid from the funds appropriated for the payment of the expenses of the highway department; provided, however, that the amount of such premium so paid shall be approved as to amount by the state treasurer. The state, the several governmental subdivisions thereof, or any person damaged by any wrongful act or omission of said commissioner of highways in the performance of his official duties may maintain an action on such bond for the recovery of damages so sustained. The commissioner of highways shall have an official seal with which he shall authenticate his official acts. There shall be engraved on the margin thereof the words "COMMISSIONER OF HIGHWAYS—STATE OF MINNESOTA" and in the center thereof the same device as is engraved on the great seal of the state. ('17 c. 119 § 2)

[2496—]3. **Expenses—State road and bridge fund**—The expense of the highway department, including the salary of the commissioner of highways and of the deputy commissioner of highways, the salary of the several assistant engineers, the necessary clerical and technical assistants and employees, their necessary expenses and the expense of maintaining the office of said highway department shall be paid by the state treasurer from the moneys apportioned therefor from the state road and bridge fund upon vouchers approved by the commissioner of highways, after the same have been duly audited by the state auditor; provided, however, that the amount which may be so expended in any one year shall not exceed ten per cent of the total state road and bridge fund available for such year and so much of said state road and bridge fund as is necessary for said purpose, not exceeding said limitation, is hereby annually appropriated from said state road and bridge fund for said purpose; provided furthermore, that the expense of maintaining the office of said highway department, including the salary of the commissioner of highways and that of the deputy commissioner of highways and the necessary clerical and technical assistants and employees employed in such office, but exclusive of the salaries and necessary expenses of the assistant engineers employed by the commission outside of said office, shall in no year exceed the sum of twenty-five thousand dollars (\$25,000.00). ('17 c. 119 § 3)

2497. **Assistant engineers—Compensation—Bonds—Duties of commissioner, deputy and assistants—Records—Duty of attorney general—Persons heretofore appointed**—The commissioner of highways shall appoint a suitable number of assistant engineers and employ such other persons as he may from time to time require and shall fix their compensation. Provided that the maximum amount to be paid to any assistant engineer, except the first assistant road engineer and chief bridge engineer, shall not exceed the sum of two thousand (\$2,000.00) dollars per annum. The deputy commissioner of highways and the assistant engineers shall, before entering upon the duties of their offices, give bond to the state in the penal sum of \$3,000, to be approved by the Governor and conditioned for the faithful performance of their official duties. The state, the several governmental subdivisions thereof or any person damaged by any wrongful act or omission of said deputy commissioner of highways, or any of said assistant engineers in the performance of his official duties, may maintain an action on his bond for the recovery of the damages so sustained.

It shall be the duty of said commissioner of highways, his deputy and the assistant engineers, to give advice, assistance and supervision with regard to road and bridge construction and improvement throughout the state, as may be required and as the rules and regulations of the commissioner of highways may prescribe and to render such other engineering and surveying services as may be required by the Governor for any of the state departments.

The commissioner of highways, his deputy, the assistant engineers and other persons employed by said commissioner shall be allowed their neces-

sary expenses incurred in the performance of their official duties outside of the State Capitol or outside the county in which they reside.

All of the files and records of the highway department shall, under reasonable regulations, be open to public inspection, and copies thereof certified by the commissioner of highways as being true copies, shall be received in evidence in any court in this state with the same force and effect as the originals. The attorney general shall be ex-officio attorney for the commissioner and shall give him such legal counsel, advice and assistance as he may from time to time require.

All persons heretofore appointed to any office or employment by the state highway commission shall, after the passage of this act, unless the office to which such appointment was made is abolished by this act, continue in such office or employment and receive the compensation provided therefor until he or she shall be removed therefrom by the commissioner of highways and until his or her compensation shall be changed by order of the commissioner of highways. ('13 c. 235 § 10, amended '17 c. 119 § 6)

2498. Duties of commissioner—Annual report—Whenever practicable said commissioner shall investigate and determine the location of road material in the state, ascertain the most approved methods of construction and improvement of roads, investigate the most approved laws in relation to roads in other states and hold public meetings throughout the state when deemed advisable. On or before March 1st of each year he shall make a printed report to the Governor stating among other things, deemed by him expedient and of general interest on the subject of road building, as near as possible, the number of miles of state roads built or improved during the preceding year and their cost; the general character and location of material suitable for road construction; the general character and needs of the roads of the state; and recommend such legislation as he deems advisable. ('13 c. 235 § 11, amended '17 c. 119 § 7)

2500. Moneys, how expended—Vouchers, etc.—The moneys allotted by the commissioner of highways, the state treasurer and the state auditor from the state road and bridge fund for the expenses of the highway department shall be expended under the direction and supervision of the commissioner of highways; all vouchers for such expenditures shall be approved by the commissioner of highways and paid by the state treasurer upon warrants drawn by the state auditor. ('13 c. 235 § 13, amended '15 c. 116 § 2; '17 c. 119 § 8)

2501. Not to be interested in contracts—It shall be unlawful for the commissioner of highways, his deputy or any assistant engineer to be directly or indirectly interested in any contract for the construction or improvement of any road or bridge constructed or improved under the provisions of this act. Any such person violating this provision shall be deemed guilty of a gross misdemeanor. ('13 c. 235 § 14, amended '17 c. 119 § 9)

2502. Reserve maintenance fund—Apportionment of road and bridge fund, etc.—On or before the first Tuesday in April in the year 1917, and on or before the first Tuesday in January of subsequent years, the commissioner of highways, the state treasurer and the state auditor shall estimate the probable sum of money that will accrue to the state road and bridge fund during the current year and after first setting aside therefrom an amount not exceeding \$50,000 for a reserve maintenance fund, to be expended as herein-after provided, and also a sum not exceeding ten per cent of the sum it is estimated will accrue to the state road and bridge fund during the then current year, which sum shall constitute the expense fund of the highway department, shall apportion the balance of the state road and bridge fund among the different counties of the state as herein provided and shall immediately send a statement of such apportionment to the state auditor and to the county auditor of each county, showing the amount apportioned to each county for expenditure during such year.

Not less than one per cent nor more than three per cent of the state road and bridge fund available in any year and remaining after setting aside the two funds hereinbefore provided for, shall be apportioned to any county.

Any fund in excess of one-half of one per cent of the total state road and bridge fund available for allotment in any one year, which, for a period of two years after such allotment shall remain unused and unexpended by such county, or for work done in such county, shall revert to the unapportioned funds in the state road and bridge fund and be thereafter and during the next succeeding year apportioned the same as other funds added to such state road and bridge fund by taxation or otherwise. ('13 c. 235 § 15, amended '15 c. 116 § 3; '17 c. 119 § 10)

125-325, 146+1110; note under § 2605.

2503. Allotment, how used and expended—Duty of county boards—Preferences, etc.—Not less than twenty per cent nor more than thirty per cent of the allotment so made to any county shall be used for maintenance of state roads and bridges thereon. Payment shall be made by the state to a county only for such proportion of the cost of maintenance of any road as is hereinafter specified with reference to the payment of state aid to such county for the construction or improvement of a state road therein.

It shall be the duty of the county board of each county in which state roads have heretofore or may hereafter be designated, to provide for the proper maintenance of the same in accordance with the rules and regulations of the commissioner of highways.

In the expenditure of the funds for maintenance preference shall be given to state roads improved as such and especially such state roads, to the cost of construction or improvement of which the United States has contributed.

The state's proportion of the cost of such maintenance shall be paid from the proportion of the allotment made to the county set aside for maintenance purposes, to an amount not exceeding the proportion so set aside for maintenance purposes. Such payments shall be made upon reports to the commissioner of highways, by the county auditor, after approval by the commissioner of highways, in substantially the same manner as is herein provided for the payment of the state's share of the cost of construction and improvement of state roads.

In case the county board of any county fails or neglects to maintain any state road as to which it is hereinbefore directed preference shall be given in the expenditure of the funds set aside for maintenance purposes in accordance with rules and regulations promulgated by the commissioner of highways. He may cause the same to be maintained and to pay the expense thereof from the "Reserve Maintenance Fund." He shall have power to enter into contracts for the performance of work or he may purchase the necessary tools and materials and employ the necessary labor and cause the same to be done by day labor under the supervision of an assistant engineer; provided, however, that the amount so expended in any one county in any one year shall not, together with the funds allotted to such county during such year, exceed an amount equal to three per cent of the total state road and bridge fund available for allotment and expenditure during such year; and provided further, that an amount equal to any sum so expended by the commissioner of highways in any county during any one year shall at the time of the next allotment of the state road and bridge fund be deducted from the allotment which would otherwise be made to such county and the amount so deducted shall be credited to the reserve maintenance fund; provided further, however, that no county shall by reason of any such deduction receive in any one year less than one-half of one per cent of the total state road and bridge fund provided and expended during such year.

The amount which shall be paid by the state out of the allotment of the road and bridge fund, to any county as state aid, in the construction or improvement of any road or bridge in any county in any year, shall be as follows:

In counties where the assessed value of the property for taxation purposes is less than five million (\$5,000,000) dollars, 80 per cent; in counties with a taxable valuation of five million (\$5,000,000) dollars and less than ten million (\$10,000,000) dollars, 70 per cent; in counties with a taxable valu-

ation of ten million (\$10,000,000) dollars and not exceeding fifteen million (\$15,000,000) dollars, 60 per cent; in all other counties, 50 per cent. In determining the taxable valuation hereinbefore provided for, the assessed valuation of moneys and credits provided for in chapter 285, General Laws 1911 [2317-2328], shall be excluded. The proportion of the cost of constructing any road or bridge above specified shall be paid by the state only in case the funds apportioned to any given county, over and above the amount set aside for maintenance, as herein provided, shall be sufficient therefor. ('13 c. 235 § 16, amended '15 c. 116 § 4; '17 c. 119 § 11)

2504. Rules and regulations for construction—As soon as the commissioner of highways shall have ascertained the location of the available road material throughout the state, and the best methods of road and bridge construction, as far as the same may be practicable, he shall prepare and adopt such rules and regulations for the construction, maintenance and improvement of state roads as shall be most suitable to the requirements of, and bring the most practicable results to, the several parts of the state.

Such rules and regulations shall be printed and copies shall be forwarded to the county auditor of each county in the state for general distribution. Such rules and regulations may be amended from time to time, but such amendments must be printed and distributed not later than April 1st of each year. ('13 c. 235 § 17, amended '17 c. 119 § 12)

2505. Designation of state roads—Surveys—The county board of any county may, with the consent of the commissioner of highways, designate any established road, or specified portion thereof, in its county, not within the corporate limits of any borough, village or city, as a state road, and construct or improve the same in accordance with the regulations of the commissioner of highways relative to state roads.

Any such board may also, with the consent of the commissioner of highways, designate as a state road, any street or road not less than sixty feet in width and lying within the corporate limits of any village, borough or city of the fourth class and constituting a direct connecting line with the parts of a state road leading to and out of any such borough, city or village.

When any county board has designated any road as a state road as herein provided, the county auditor shall transmit a copy of the resolution to the commissioner of highways, together with a description of the road so designated. It shall be the duty of the commissioner of highways to thereupon determine whether sufficient funds will be available from the state road and bridge fund for the improvement of said road as a state road and also determine the desirability of such designation with reference to the relation of such road to other state roads, or its relation to other roads and traffic conditions in such county and if he determines such question in the affirmative, then and in such case, the commissioner of highways may, by his order in writing, to be filed with the county auditor, consent to the designation of such road as a state road.

Any street or road within the corporate limits of any borough, village or city of the fourth class designated as a state road, as hereinbefore provided, may be improved by the county as other state roads are improved and state aid paid therefor in the same manner and to the same extent as other state roads lying within the county wherein such borough, village or city is situate; provided, however, that the grade of any such street shall not be changed without the consent of the governing body of any such borough, city or village; and provided further, that the plans and specifications for any improvement thereof shall be approved by such governing body before such work is commenced.

Whenever it shall be made to appear to the commissioner of highways that the board of county commissioners of any county has refused to grant an application to it made by at least ten freeholders, residents of such county, to designate any established road or part thereof as a state road, the commissioner of highways may consider such application *de novo* and if in his opinion, sufficient funds will be available for the improvement of such road, and its designation and improvement as a state road is desirable because of

the relation of such road to other state roads or traffic conditions in such county, the commissioner of highways may by his written order designate such road or part thereof as a state road without a prior designation thereof by the county board or its concurrence in such designation. A copy of such order shall be filed with the county auditor.

Any roads which may have been at any time designated as state roads may, by joint action of the county board and the commissioner of highways, be abandoned or changed as such.

The commissioner of highways shall make or cause to be made all necessary surveys, establish grades and prepare plans and specifications for all state roads, except roads in counties which now have or hereafter may have a county superintendent of highways or other officer to superintend the construction and improvement of roads within its confines, and shall cause to be superintended all work done on such designated state roads. Such work may be done under contract or by day labor, as the county board and the commissioner of highways may direct, and a report thereof shall be made by the engineer in charge thereof in duplicate, as may be required by the commissioner of highways, one copy of which shall be delivered to the county auditor and one to the commissioner of highways. ('13 c. 235 § 18, amended '15 c. 116 § 5; '17 c. 119 § 13)

2506. Designation of road on county line as state road—Whenever the county boards of adjoining counties make application to the commissioner of highways for the designation of an established road running on or near the boundary line between two counties, as a state road, said commissioner of highways shall investigate the desirability of such designation and if he shall decide that it is desirable so to do, shall so designate such road and determine and fix the part of the cost of the improvement and maintenance thereof to be paid by each county. ('13 c. 235 § 19, amended '17 c. 119 § 14)

2507. Assistant engineers—Duties—The commissioner of highways shall appoint as many assistant engineers throughout the state as he may deem necessary for the purpose of properly superintending all work done on state roads. Such assistant engineers shall devote their entire time to their official duties; may be assigned by the commissioner of highways to one or more counties as deemed advisable and shall act under the instruction of the commissioner of highways and the rules and regulations promulgated by him. The commissioner of highways shall cause all necessary surveys, estimates, plans and specifications for work to be done on state roads to be made and prepared by the highway department. It shall be the duty of the assistant engineers upon request of the board of county commissioners of the county to which such assistant engineers are assigned, or any town board of supervisors in such county, to advise and consult with such county or town board in the construction or improvement of county or town roads, to make plans and specifications when so required; to exercise supervision over such construction or improvement when requested so to do by the county board or town board, as the case may be, and lend every possible assistance to the local road authorities in building and improving the public highways. All persons appointed by the commissioner of highways to any office or position shall be appointed solely on his or her merits and qualifications.

The commissioner of highways shall pay from the funds appropriated for the expenses of the highway department, all the expenses of the assistant engineers and all expenses incidental to the making by them of surveys, estimates, plans and specifications for work to be done on the public roads, including the expenses of such engineers incidental to the supervision by them of the construction or improvement of any public road. It shall be lawful, however, for a county board of any county to furnish a suitable office and office furniture and equipment at the county seat of its county for the use of an assistant engineer assigned to such county. ('13 c. 235 § 20, amended '15 c. 116 § 5A; '17 c. 119 § 15)

2508—Procedure of county board in constructing or improving state roads—Whenever the county board of any county shall determine to build

or improve any state road for which aid is to be claimed, they shall proceed as follows:

If the estimated cost of such work does not exceed five hundred dollars (\$500) the said board shall cause surveys, when necessary, to be made therefor, by an assistant engineer, and shall thereupon receive bids for all or part of said work and let the contract to the lowest responsible bidder, or may cause the same to be done by day labor under the supervision of said engineer. In case the estimated cost exceeds five hundred dollars (\$500) the said county shall cause surveys, plans and specifications therefor to be made by an assistant engineer and submit the same to the commissioner of highways for approval, and when such plans and specifications are approved, the said county board shall proceed to do said work by contract or day labor. The work shall be done under the supervision of an assistant engineer, who shall in all matters pertaining to such work act under the rules and regulations of the commissioner of highways.

The provisions of this section shall not apply to any county which now has or which may hereafter have a population of one hundred fifty thousand (150,000) inhabitants and over and a county superintendent of highways or other county officer to superintend the construction or improvement of roads within its confines. ('13 c. 235 § 21, amended '17 c. 119 § 16)

2509. State aid, how paid—After any county board shall have completed any work on a state road for which state aid is claimed, the auditor of such county shall make a statement to the commissioner of highways showing the location, nature and cost of such work and shall also submit a detailed report from the assistant engineer in charge showing all such details concerning the same as may be required by the commissioner of highways. On receipt thereof the said commissioner of highways shall proceed to examine such reports and if he finds the same satisfactory and that the work has been done in substantial compliance with the plans and specifications therefor, and the contract therefor, if any, he shall certify the same to the state auditor who shall issue a warrant for the state's share thereof as shown by said report, payable to the treasurer of such county, but in no case shall said warrant with all other warrants exceed the amounts allotted to such county, and it shall be the duty of the assistant engineer to report such work in duplicate to the county auditor with details and cost within thirty days after the completion thereof, one copy of which shall be sent to the commissioner of highways with the auditor's report.

The detailed report of the assistant engineer mentioned herein shall contain, among other things, a statement showing the municipal subdivision performing the work or expending the money on such highway, and if more than one such municipal subdivision has performed work or expended money on such highway, then the names of such municipal subdivisions and the portion of the work performed or money expended by each. The county auditor upon receipt of the money from the state shall pay or credit the same to the municipal subdivision entitled thereto, and if more than one such municipal subdivision has performed work and expended money upon such highway as shown by the assistant engineer's report, then to each of such municipal subdivisions in the proportion shown by such assistant engineer's report. ('13 c. 235 § 22, amended '17 c. 119 § 17)

[2510—]1. Highway commission empowered to aid in building bridges in certain cities and villages—The state highway commission is hereby authorized to pay into the treasury of a village or city of the third or fourth class a part of the allotment of the state road and bridge fund, made to any county situate as hereinafter specified, to aid such village or city in the construction, rebuilding or improvement of a bridge situate wholly or in part in such village or city and connecting with a state road, state rural highway or other public highway lying in the same or an adjoining county, when requested so to do by the county board of the county to which the allotment is made. ('15 c. 21 § 1)

[2510—]2. Same—County board to authorize payment of allotment—Whenever the council of any village or city of the third or fourth class shall

determine that it is necessary to build, rebuild or improve any bridge, including approaches thereto, upon or forming a part of the street or highway, either wholly or partly within its limits, when such bridge shall form a part or connect with any state road, state rural highway or public street leading into or through such village or city, the county commissioners of the county in which such village or city is situate and the county commissioners of an adjoining county in which the state road, state rural highway or other public highway with which such bridge will connect is situate, may by resolution authorize the state highway commission to pay to the village or city a designated amount out of the allotment of the state road and bridge fund made to such county or counties, to aid such village or city in the building, rebuilding or improving of such bridge, provided, however, that the aggregate amounts so to be paid from the allotment or allotments of such county or counties, shall not exceed one-half of the cost of the construction, rebuilding or improvement of such bridge, and provided, further that no payment shall be made by the state highway commission from such allotment or allotments on any bridge which is not constructed, rebuilt or improved under the general supervision of the state highway commission and in accordance with the plans and specifications approved by it. ('15 c. 21 § 2)

[2510—]3. Same—Payments during consecutive years—Such payments may be made by the state highway commission, on request of the board of county commissioners during two consecutive years. ('15 c. 21 § 3)

[2510—]4. Same—Payments on estimates of state engineer—Such payments not exceeding in the aggregate the amounts specified by the board of county commissioners may be made by the state highway commission from time to time as the work of construction progresses and on estimates made or approved by the state engineer, not exceeding however one-half of the amount of such estimates; final payment to be made to the village or city when the bridge is completed and accepted. ('15 c. 21 § 4)

ROADS ESTABLISHED BY JUDICIAL PROCEEDINGS

2511. Highway in two or more counties, etc.—Petition—Commissioners—

General appearance—A landowner held not to have submitted himself to the jurisdiction of the court by a general appearance or by taking part in the proceedings under this section (132-454, 157+706). Highways, §31.

2512. Notice of presentation of petition—

That a notice under this section misstated the time of the appointed date of a special term was not an objection available to one who was not misled thereby, but was present at the presentation of the petition (132-454, 157+706). Highways, §30(3).

[2516—]1. Certain highway proceedings legalized—That in any and all cases, where a proper petition for the establishment of a judicial highway under the provisions of chapter 13, General Statutes for 1913, has been presented to a judge of any district court in this state, and an order has been made and filed in said proceeding appointing highway commissioners and said commissioners have fully performed their duties and filed their report establishing the highway as ordered by said judge, and that notice of the presentation of said petition was given as required by law, except that such notice was not posted in three public places in each of the counties affected, such proceedings are hereby declared to be in all respects legal, valid and effective as though a notice of presentation of such petition was posted in each of such counties affected as required by law; provided, that nothing herein contained shall be construed to apply to actions now pending which involve the validity of any such proceeding. ('15 c. 302 § 1)

2517. Powers of county board— * * *

Subdivision (3). Bridges in villages, boroughs and cities of the fourth class—

Evidence held to justify finding of negligence of defendant village in failing to provide guard rails for bridge (128-47, 150+221). Bridges, §46(9).

Subdivision (5). County may issue bonds, when—When authorized by the voters as hereinafter provided, the county board of any county is authorized to issue bonds for the purpose of macadamizing any established county road or roads therein, or surfacing the same with any hard material or in any other way making a permanent improvement thereon, when the expense of so doing exceeds the amount of any appropriation the county board is authorized to make therefor.

Whenever fifty or more voters of the county who are also freeholders, petition for such improvement, and file such petition with the county auditor, he shall lay the same before the county board at its next regular, special or adjourned meeting.

It shall be the duty of the county commissioners to consider such petition and if they find it contains the requisite number of signatures, they shall request an estimate of the cost of such improvement to be made by an assistant engineer.

If such estimate is furnished more than six months prior to the time of holding the next general election, the county board may, if it deems it desirable, order the holding of a special election in the county for the purpose of voting on the question of making such improvement and issuing bonds therefor. No special election shall be ordered when a general election will be held within six months after the estimate of the assistant engineer is filed with the county auditor. If a special election is ordered, the county auditor shall cause ballots to be prepared, setting forth a statement of the proposed improvement and description of the road or roads to be improved, with the words "yes" and "no" thereafter, with appropriate spaces for voting.

Persons voting in favor of the proposition shall put a cross (X) after the word "yes" and those opposed after the word "no." If not submitted at a special election the auditor shall cause the same to be submitted at the next general election. In either event the votes on such question shall be returned and canvassed as is provided by law with reference to other questions submitted to the voters. If a special election shall be ordered the same shall be held substantially in the manner provided by law for the holding of general elections, and the auditor shall cause published notice thereof to be given in the official paper of the county for three successive weeks prior thereto, giving a description of the road or roads to be improved and a statement of the improvement proposed and the estimated cost thereof. If a majority of the voters voting at the election vote in favor of the improvement, then the county board shall issue the bonds of the county as hereinafter provided and cause the improvement to be made.

The bonds so issued shall bear interest, evidenced by coupons, at a rate not exceeding six per cent per annum, payable annually; such bonds may be made payable in equal installments, the first of which shall become due and payable not less than five years after the date thereof and the last of which installments shall become due and payable not more than twenty years after the date thereof. Said bonds shall not be sold for less than par and accrued interest and the proceeds thereof shall be used by the county only for making the improvements specified in the proposition as submitted to the voters; such bond shall not be valid until registered by the county auditor and his certificate of registration endorsed thereon. The county auditor shall thereafter levy a sufficient tax to pay the interest and principal of said bonds as the same shall accrue, which tax shall be collected as other taxes are collected; provided, however, that no such bonds shall be issued by any county when the issuance of the same would make the entire indebtedness of the county exceed fifteen per cent of the assessed valuation of the taxable real property of the county; provided, that in computing the indebtedness of any county, any indebtedness created by the issue of bonds of such county for the construction of drainage ditches the cost of which is assessed against the benefited property, shall not be included. ('13 c. 235 § 30 subd. 5, amended '17 c. 119 § 18)

2518. County road and bridge fund—Tax levy—The county board at its July meeting may include in its annual tax levy, an amount not exceeding

five mills on the dollar of the taxable valuation for the county road and bridge fund. Such taxes may be additional to the amount permitted by law to be levied for other county purposes. ('13 c. 235 § 31, amended '17 c. 119 § 19)

[2518—]1. **Road and bridge tax on unorganized territory**—The county boards of the several counties in which there may be situated any territory not organized for township purposes are hereby authorized to, and they may in their discretion, annually levy a tax for road and bridge purposes on all the real and personal property in such unorganized territory, exclusive of moneys and credits taxed under the provisions of Chapter 285, Laws 1911 [2316-2328], not exceeding, however, fifteen mills on the dollar of the assessed value of such property. Such tax, if levied, shall be additional to the tax which the counties are authorized to levy for county road and bridge purposes. ('15 c. 44 § 1)

[2518—]2. **Same—Resolution—Duty of auditor**—If any county board deems it desirable to levy such a tax on such property, it may at the time it levies the county taxes, by resolution reciting such fact, determine the amount so to be levied in each congressional township of such unorganized territory for the then current year. It shall be the duty of the auditor to extend such tax so levied upon the tax books of the county, at the same time and in the same manner as other taxes for county purposes are extended, as to property in such unorganized territory, and the same shall be collected and the payment thereof enforced at the same time and in the same manner as other county taxes on such property, and with like penalties for non-payment at the time prescribed by law. ('15 c. 44 § 2)

[2518—]3. **Same—Separate funds**—Such tax, when collected, shall be set apart in separate funds in the county treasury; such funds shall be designated in such a manner as to describe each thereof, as the road and bridge fund for the congressional township the property of which is so taxed to create such fund. ('15 c. 44 § 3)

[2518—]4. **Same—How expended**—Such fund shall be expended under the direction of the county board for the construction, improvement, maintenance and repair of roads and bridges in the congressional township, the property of which was so taxed to create such fund. ('15 c. 44 § 4)

[2518—]5. **Same—Tax on what territory levied**—The tax above provided for may be levied on all or only a part of the unorganized territory in any county, provided, however, that no part of such unorganized territory less than a congressional township shall be so taxed. ('15 c. 44 § 5)

[2518—]6. **Road and bridge fund in counties having 300,000 inhabitants, etc.**—In all counties in this State now or hereafter having a population of 300,000 or more inhabitants where the maximum rate of taxation for county purposes is fixed by a board of tax levy, or other corresponding body, the annual estimate of the county board for the road and bridge fund of such county as filed with such board of tax levy, or other corresponding body, to an amount not exceeding two mills on the dollar of the taxable valuation of such county, shall be allowed in full, for the years 1917 and 1918 and shall be included in the tax levy and shall not for any reason be reduced, altered or amended. Provided that not more than four-tenths (4-10) of a mill of such tax levy may be used for the repair, maintenance and upkeep of highways and bridges and that the balance of such tax levy shall be used solely and only for the construction of main arterial roads. ('17 c. 339 § 1)

Section 2 repeals inconsistent acts, etc.

COUNTY ROADS OTHER THAN THOSE ESTABLISHED BY JUDICIAL PROCEEDINGS

2519. **Powers of county board**—Counties having 200,000 inhabitants—County roads, other than those established by judicial authority, shall be established, altered or vacated only by the county board. Damages resulting

from the establishing, altering or vacating such roads shall be determined in the manner hereinafter provided, and shall be paid by the counties through which they pass. All proceedings in establishing, altering or vacating roads shall be recorded in a public record book, designated as the "Book of County Roads."

The county commissioners of any county are hereby authorized and empowered to constitute and declare any public highway or road in such county outside of the corporate limits of any incorporated city or village therein, a county road; and they are hereby given general supervision over such roads, with full power to appropriate such sums of money from the county treasury of such county as they may deem advisable for improving the same; provided, that nothing contained in this section shall be so construed as to relieve the supervisors or town overseer of highways of any town in such county from any of the duties imposed upon them by existing laws relating to roads, cartways and bridges, nor to repeal any existing special law relating to roads, cartways and bridges applicable to such county.

In any county of this state having two hundred thousand (200,000) inhabitants or over, or which may hereafter have two hundred thousand (200,000) inhabitants or over, the county commissioners thereof are hereby authorized and empowered to extend any street or avenue beyond the city or village limits of any city or village in such county to connect with any road or highway in any adjoining county, which extension, however, shall not exceed one mile in length; and said county commissioners are given full power to change, alter, improve or repair such extension of road within such county, and to appropriate such sum or sums of money from the county treasury of such county as they may deem advisable therefor; provided, that in no case shall the location of such road wherewith such extension shall be connected, be changed at the point where the same now crosses the county line between such county and such adjacent county or counties. ('13 c. 235 § 32, amended '15 c. 116 § 6)

2520. Roads in more than one town, etc.—Petition—Whenever twenty-four freeholders of any county petition the county board for the establishment, alteration or vacation of any road or of any roads which connect with each other running into more than one town, or partly in one or more towns and partly on the line between one or more towns, or on the line between two or more towns, in such county, or along the shore of any lake wholly or partly in such county, or into a town or towns and the unplatted part of any village or villages therein, such road or roads not being within a city, or any road wholly within a town, which constitutes a direct connecting link with two or more roads in the towns adjoining the town in which such road is, or is to be located, setting forth the beginning, course and termination or the beginnings, courses and terminations of the road or roads, and the names of the owners of the land, if known, through which the same may pass, and file the same with the auditor, he shall forthwith lay the same before the board, if in session, and if not, at their first session thereafter. If the petition relate to a road or roads, partly in a town or towns, and partly in the unplatted portion of a village or villages, before it shall be acted upon by the county board it shall have attached thereto a certified copy of a resolution of the village council or of each village council, as the case may be, approving the same. ('13 c. 235 § 33, amended '15 c. 116 § 7)

TOWN ROADS

2525. General supervision in town board—The town board of each town shall have general care and supervision of all town roads therein, and such care and supervision of county roads therein as is prescribed by the provisions of this act, and shall procure machinery, implements, tools, stone, gravel, and other material required for the construction and repair thereof, provided, that in counties having a population of one hundred fifty thousand (150,000) or over and which now have or hereafter may have a county superintendent of

highways or other officer to superintend the construction or improvement of roads within its confines, the town board shall not have jurisdiction over county roads. ('13 c. 235 § 38, amended '15 c. 116 § 8)

Town officers are not liable to one injured on a highway owing to their failure to keep it in repair (134-41, 158+725). Highways, ~~§~~198.

While mandamus may lie to compel the town board to repair a public road, where such board refuses to exercise its discretion, the person seeking the remedy must show a clear right to the relief demanded (133-160, 157+1092). Mandamus, ~~§~~94.

In mandamus to compel the repair of public roads, the persons composing the town board may properly be made defendants (133-160, 157+1092). Mandamus, ~~§~~151(2).

2527. Taxation—Subdivision (1). All real and personal property in each town liable to taxation, other than "moneys and credits" taxed under Chapter 285, Laws 1911 [2316-2328], shall be taxed for road purposes, and except as provided in subdivision 2 of this section all road taxes hereafter levied shall be paid in cash. The electors of each town shall have power at their annual town meeting to determine the amount of money which shall be raised by taxation for road and bridge purposes, not exceeding, however, fifteen (15) mills per dollar on the taxable property of the town. The tax so voted shall be extended, collected and payment thereof enforced in the same manner and at the same time as is provided by law for the extension, collection and enforcement of other town taxes.

After the annual town meeting, in case of emergency, the town board may levy a tax on the property in its town for road and bridge purposes in addition to the tax, if any, voted at the annual town meeting for road and bridge purposes, in an amount not to exceed five (5) mills on the dollar of the assessed value of the property in the town, and any tax so levied by the town board shall forthwith be certified to the county auditor for extension and collection.

The town board may thereafter pledge the credit of the town by issuing town orders not exceeding, however, the amount of the additional tax so levied by the town board for road and bridge purposes, in payment for work done or material used on the roads within the town. ('13 c. 235 § 40, amended '17 c. 119 § 20)

Subdivision (2). (a) In any town wherein the voters shall at the annual town meeting vote, as hereinafter provided, to authorize the town board so to do, the town board may levy and assess on the property subject to taxation under the provisions of subdivision (1) of this section, an additional tax for road and bridge purposes, not exceeding in amount ten mills on the dollar of the assessed value of such property, which tax so levied shall be known as the optional road tax and which may be paid by the person whose property is so taxed in labor or by furnishing the use of a team for road work at the following rates, to-wit: for each day of work actually performed in labor on the roads of the town under the supervision of the road overseer, two dollars, for the furnishing of a team, two dollars and fifty cents per day. Provided that no optional road tax shall be levied in any year unless there is also levied in such year at least a three mills tax payable in cash, as provided in subdivision one of this section.

(b) When a petition signed by ten or more freeholders and voters of a town shall be presented to the town clerk at least twenty (20) days before the time of the holding of the annual town meeting, praying that the question of authorizing the town-board to levy and assess an optional road tax be submitted to the voters of such town, the town clerk shall include in his notice of such annual meeting a notice that such question will be voted on at such meeting. Such question shall be voted on by ballot and it shall be the duty of the clerk to provide, at the expense of the town, a suitable number of ballots which may be printed or written or partly printed and partly written in substantially the following form, to-wit:

Shall the Town Board be authorized to levy and assess an	} No..... Yes.....
"Optional Road Tax?"	

If a majority of the votes cast on the proposition be in the affirmative, the town board shall have authority to levy a tax as provided in paragraph (a)

of this subdivision, until such time as the electors at an annual town meeting, upon like procedure, shall have voted by a majority vote of those voting on the question to withdraw from the town board authority to levy an optional road tax. The votes on such question shall be canvassed and the result declared and recorded in the manner provided by law with reference to the election of town officers.

(c) Forthwith upon the granting of authority to levy the optional road tax the town clerk shall make application to the county auditor for a certified copy of the assessment list of the real and personal property taxable by the town, and it shall be the duty of the county auditor to thereupon and annually thereafter furnish the town clerk upon request with such list. Such list so furnished by the auditor shall set forth in tabular form the name of each person taxable in the town, the description of the real property owned by such person and the assessed value thereof and the value of the personal property owned by each person as shown by the assessment list last theretofore corrected and equalized.

(d) Within twenty (20) days after the annual town meeting, the town board shall meet and levy a tax on the property taxable in the town as shown by such list so furnished by the auditor, not exceeding ten mills on the dollar of the assessed value thereof, and extend the amount of the tax so levied and assessed opposite the name of each owner thereof. It shall be the duty of the clerk to forthwith make and deliver to each road overseer in the town a list in book form of the names of the taxpayers as shown by such list and resident in his district, together with the amount of the tax so levied and assessed against such taxpayer.

(e) It shall be the duty of each overseer to give notice in writing to each taxpayer named in his list of the time and place when and where such taxpayer can appear, either by himself or an able-bodied substitute, and perform labor on the roads of the town, or furnish a team for such purpose, in payment of such tax at the rates hereinbefore specified. Any taxpayer unable to appear at the time and place specified in the notice of the overseer may thereafter and prior to October 15th of such year, with the consent of the overseer, perform road labor or furnish a team for road work in payment of such tax.

(f) On or before the 15th day of October in each year each overseer shall return to the town clerk such list so theretofore delivered to him with the word "Paid" marked opposite the name of each person therein named who has performed labor or furnished a team for road work, to an amount sufficient to pay such tax, and if only in part, then the words "Delinquent to the extent of \$....." He shall also mark the word "Delinquent" opposite the name of each person who has not done any work, or furnished a team as herein provided. On or before the first of November in each year the town clerk of each such town shall transcribe all such entries from the lists so returned by the overseers on to the list theretofore furnished to him by the county auditor and transmit the said list to the county auditor, and shall append thereto a certificate to be signed by him, reciting that the same contains a correct list of the optional road taxes delinquent for the year therein stated. The auditor shall thereupon extend such delinquent optional road tax upon the tax list of the current year and the same shall be collected and the payment thereof enforced with and in the same manner and subject to the same penalties and interest as other town taxes. Such tax when collected shall be paid to the town treasurer and credited to the town road and bridge fund. ('13 c. 235 § 40, amended '17 c. 119 § 21)

1917 c. 119 § 21 further amends 1913 c. 235 § 40, by adding a subdivision to be known as subdivision (2), as above set forth.

2528. Dragging roads—Tax—Dragging fund—The county auditor of each county shall annually extend upon the tax lists of his county, in the same manner as is provided by law for extending the county school tax, a tax of one mill on the dollar of the taxable property in each town, outside the cor-

porate limits of any borough, village or city in any such town; provided, that in towns having an assessed valuation of one million (\$1,000,000) dollars or more, the amount of such tax shall not exceed one thousand (\$1,000) dollars. The tax so levied shall be collected and the payment thereof enforced in the same manner as is provided by law for the collection and enforcement of other town taxes extended by the county auditor. The county treasurer shall settle with and pay over to the town treasurer such taxes when collected at the time and in the manner now provided by law with reference to other town taxes.

The proceeds of such tax levy shall be kept in a separate fund to be known as the "dragging fund" and shall be expended by the town board only for the expense of procuring a suitable number of drags and dragging the roads of the town; in putting straw on sandy roads and removing snow from town and county roads, provided, however, that if on the first day of April in any year there shall be an unexpended balance in said fund, which unexpended balance exceeds in amount the sum of one hundred dollars, the town board may transfer all or a part of the amount in such dragging fund in excess of one hundred dollars, to the town, road and bridge fund, provided, however, such transfer shall not be made until it shall first affirmatively appear that the town board has theretofore procured a suitable number of drags and that the roads of the town have been properly dragged.

The town board in each town, on recommendation of the town or district road overseer may enter into contracts for the dragging of the roads of the town or district, giving preference to the main traveled road and roads constituting mail routes within their respective towns; provided, however, that the compensation which may be agreed to be paid for each time a road is dragged shall not exceed one dollar per mile for each mile of road dragged.

The contract price shall be paid from the "dragging fund" in the same manner as other claims against the town, after approval by the road overseer. ('13 c. 235 § 41, amended '15 c. 116 § 9; '17 c. 259 § 1)

2529. Town overseers—Assistants—Each town shall constitute one road district, except when otherwise provided. When directed so to do by the voters of the town at the annual town meeting, the town board shall divide each town into as many road districts, not exceeding four, as shall be directed by the voters at the annual town meeting. Provided that for the year 1915 the town board may of its own volition divide the township into such road districts. Provided further, if a town constitutes but one road district the road overseer may appoint one or more competent assistants, subject to the approval of the town board. It shall be the duty of the town board to appoint a road overseer for each district, who shall have charge, under the supervision of the town board of the construction of all town roads in his district and the maintenance of all town and county roads therein. No member of the town board shall be eligible for appointment as town road overseer. The compensation of the road overseer shall be fixed by the town board at a sum not to exceed three dollars (\$3.00) per day for the time actually employed in the performance of his duties. Before entering upon his duties he shall give a bond to the town with sureties to be approved by the town board, in the sum of two hundred fifty dollars (\$250.00) conditioned for the faithful discharge of his duties and to return to the town all the property of the town which may come into his custody. The overseer shall hold office at the pleasure of the town board.

Provided, that such road overseer shall have no jurisdiction over county roads in any county which now has or hereafter may have a population of one hundred fifty thousand (150,000) inhabitants, or over, and a county superintendent of highways or other officer to superintend the construction and improvement of roads within its confines. ('13 c. 235 § 42, amended '15 c. 116 § 10)

Town officers are not liable for injuries resulting from their failure to keep a highway in repair (134-41, 158+725). Highways, ~~§~~ 198.

2530. Establishment, alteration or vacation—Petition—

Inaccuracies in courses and distances in description in petition to alter a road is not fatal, where from designated fixed lines and points the location can be determined (122-20, 141+810). Highways, ~~§~~72(2).

A description which is impossible of location renders the proceeding void, and the failure of a landowner to appeal does not obviate the invalidity (125-359, 147+240). Highways, ~~§~~29(5), 55.

2532. Hearing and determination—

A town board, under R. L. 1905 §§ 1171-1174, might exercise reasonable discretion in varying the route proposed in a petition, as public interest might require, but the order must adhere substantially to the petition as to the point of beginning, general course, and termination. A variance of thirty rods at the point of termination is fatal (125-359, 147+240). Highways, ~~§~~44(2).

2538. Appeals—

Under R. L. 1905 § 1199, a receipt by a landowner of money as damages, upon being informed and in the belief that a road had been legally laid out on a definite location, does not estop him from asserting that the description was impossible and void (125-359, 147+240). Highways, ~~§~~55.

2542. Cartways—Any town board may establish a cartway two rods wide on petition of not less than five voters, freeholders of such town. All their proceedings shall be the same as provided in this act for establishing town roads. The cost and expenses thereof, and the damages awarded for lands taken therefor, shall be paid by the town, as in the case of town roads, and a record of such cartway shall be filed with the town clerk; provided, that, when a road or cartway is established which will not be a continuous road from one highway to another, one-half of the damages to the land through which it passes shall be paid by the persons benefited thereby.

Town boards shall, on petition of the owner of a tract of land, of not less than five acres in area, who has no access thereto except over the lands of others, establish a cartway not more than two rods wide connecting his land with a public road. The amount of damages, if any, to be paid by the petitioner to the town before such cartway is opened.

Any town board may expend road or bridge funds upon a legally established cartway the same as on town roads if in the judgment of such board the public interests require it. ('13 c. 235 § 55, amended '15 c. 116 § 10½)

Not evidence of boundary between lands (121-468, 141+788). Boundaries, ~~§~~35(1).

The town board is not obliged to lay out the road on the route selected by the petitioner, construing Laws 1911 c. 217, amending R. L. 1905 § 1171 (122-134, 141+1115). Private Roads, ~~§~~2.

A description in a highway petition is sufficient, if monuments be designated which enable persons familiar with the locality to locate the way upon the ground with reasonable certainty. A petition locating the way by reference to a bridge, a railroad track, a section line highway, and a private road held sufficient (129-392, 152+761). Highways, ~~§~~29(5).

2543. Dedication of land for road—Wagon bridge to island—One or more owners may dedicate land for a road or cartway by making application therefor, in writing, to the town board, describing the land and the purpose of its dedication, and filing such application with the clerk. The clerk shall present the same to the town board which, within ten days after such filing, may make an order declaring the land described to be a public road or cartway. When so declared, such land shall be deemed duly dedicated for the purpose expressed in the application, and no damages shall be assessed therefor. Any person owning land to exceed forty acres constituting part of an island within any meandered lake may, at his own expense, erect a wagon bridge across such portion of the lake as may separate his land from the nearest town road on shore, provided such structure shall not interfere with the use of that part of the lake for the passage of such water craft as would otherwise pass that point, but before proceeding with the construction of such bridge, proper plans and specifications therefor shall be prepared and submitted to and approved by the town board of the township in which such bridge is to be constructed.

Upon the completion of any bridge constructed in accordance with the provisions of the preceding paragraph, the town board shall examine and approve the same and shall indorse such approval upon the plans and specifications therefor, and thereupon the same shall be filed in the office of the

town clerk of the township in which such bridge is located and such bridge shall thereupon become a part of such town road and open to the use of the public as such. (Amended '17 c. 479 § 1)

2546. Drainage of town roads—Subdivision (1). Affidavit and notice—Whenever the town overseer of roads shall file with the town board his affidavit, or if two resident freeholders of the town file their affidavit stating that a road to be constructed or any road already constructed, passing through or into said town runs into or through a swamp, bog, or other low land, and that it is necessary or expedient that a ditch should be opened through private lands, the probable length, width and depth of such ditch, the termini and general course of the same, a description of the land over which said ditch will pass, the names of the owners thereof, if known, and that such road through such low ground cannot, without extraordinary expense, be made passable unless such ditch or ditches are opened, the chairman of said board shall prepare a notice therein fixing a time, not less than six nor more than sixty days from the date thereof, when said board will meet at a place to be designated in the notice and personally examine the premises. Such chairman shall cause said notice, together with the affidavit, to be filed in the office of the town clerk, who shall make true copies of such notice and deliver them to said town overseer. Said overseer shall personally serve the same upon each of said land owners, if residents of the county, and upon the occupants of such lands where the owners are not residents of such county. Such ditch or ditches shall be laid out upon said lines as the owners of the land desire, when it is practicable and can be done without extra cost. The word ditch as used in this act shall be held to include any open, covered or tile drain. The town board may also appoint three freeholders of the town to act as viewers in laying out the proposed ditch, and shall receive the same compensation as the board for similar work. ('13 c. 235 § 59 subd. 1, amended '15 c. 116 § 11; '17 c. 259 § 2)

Subdivision (3). Hearing and assessment—At the time and place specified in the notice, the town board shall examine the road and premises over which such ditch must pass, and hear any reasons for or against laying out the same, and all evidence offered by any interested party relative to the pecuniary advantage or disadvantage which will accrue to any tract of land by reason of the establishment of such ditch, and determine upon the advisability of opening such ditch. If it determine that it is expedient and advisable to open such ditch, it shall assess the damages, if the damages exceed the benefits, which in its judgment will be just and equitable compensation to the owner of any tract of land for the right to open the ditch through his land, including the right to enter upon such land whenever necessary for the purpose of cleaning out or repairing it, awarding in such case as damages the difference between the damages and benefits.

It shall also determine the money value of the benefits which will accrue to any tract of land by reason of the construction and maintenance of such ditch and in case the benefits exceed the damages, shall assess the difference as benefits to the lands. Such determination of benefits and damages shall be made in tabular form setting forth the description of the lands and the names of the owners thereof, if known, and the benefits or damages which will accrue to each tract. The damages or benefits may be determined by agreement between the land owners and the town board.

In case of such an agreement the town board shall extend the benefits or damages, as the case may be, in such tabular statement. Any land owner may appeal, as hereinafter provided, from the amount awarded as damages or benefits. Such tabular statement shall be attached to the order establishing the ditch, if such order be made, and filed with the town clerk and any person whose lands are assessed for benefits may, within twenty days thereafter, pay the amount thereof to the town treasurer who shall issue a receipt therefor. On presentation of such receipt to the town clerk he shall mark the amount of the assessment so paid with the words "Paid and Satisfied." After the expiration of twenty days, if no appeal shall have been taken, the clerk shall certify each tabular statement to the county auditor, who shall

thereupon extend such assessment of benefits not marked "Paid and Satisfied" against the respective tracts of land therein described, of the tax lists of the town for the year next ensuing after such tabular statement shall have been so certified to him, together with interest on such assessment at the rate of six per cent per annum from the time such assessment was made until the tax list shall be delivered to the county treasurer for collection. The assessments so made shall be a lien on the land and shall be collected with, and the payment thereof enforced, in the same manner and with like penalties and interest as town taxes. Such assessments when paid or collected shall be paid into the town treasury at the time of payment of other taxes and shall be expended in paying the cost of constructing and maintaining such ditch. ('13 c. 235 § 59 subd. 3, amended '17 c. 259 § 3)

Subdivision 8. State roads—The foregoing provisions of this section shall be applicable to state roads, and in such cases the powers and duties hereinbefore conferred and imposed upon town boards, shall be and they are hereby conferred and imposed upon county boards; the powers and duties conferred and imposed upon a town clerk are hereby conferred and imposed upon the county auditor. The affidavit referred to in subdivision 1 may be made by any member of the county board. It shall be the duty of the county board to keep any ditch opened by it under the provisions of this section, in good condition and free from obstructions. The notices specified in the foregoing subdivisions may be served by any person designated by the county board for that purpose. ('13 c. 235 § 59, amended '15 c. 116 § 12)

1915 c. 116 § 12 amends 1913 c. 235 § 59, by adding a new subdivision (8), as above set forth.

Subdivision (9). Town road drainage tax—In any town wherein the voters shall at the annual meeting vote as hereinafter provided to authorize the town board so to do, the town board may levy and assess on the real and personal property in the town, other than moneys and credits taxed under the provisions of chapter 285, Laws 1911 [2316-2328], a tax not to exceed in amount ten mills on the dollar of the assessed value of such property, which tax so levied shall be known as the "Town Road Drainage Tax." Such tax shall be additional to all other taxes which the town is or may hereafter be authorized to levy and the amount of such tax so levied and collected shall be deemed to have been levied and collected for road and bridge purposes within the meaning of any law limiting the amount of taxes which may be levied or voted at the annual town meeting.

Such tax shall be certified to the county auditor, extended and collected and paid over to the town treasurer in the same manner as other town taxes and payment thereof shall be enforced in the same manner and with like penalties and interest as other town taxes. The proceeds of such tax shall constitute the town road drainage fund, which shall be expended by the town board in paying the cost and expenses of draining the public roads within the town.

When a petition signed by ten or more freeholders and voters of a town shall be presented to the town clerk at least twenty days before the time of holding the annual town meeting, praying that the question of the authorizing the town board to levy and assess a town road drainage tax be submitted to the voters of such town, the town clerk shall include in his notice of such annual town meeting, a notice that such question will be voted on at such meeting. Such question shall be voted on by ballot and it shall be the duty of the clerk to provide, at the expense of the town, a suitable number of ballots which may be printed or written or partly printed and partly written in substantially the following form, to-wit:

Shall the town board be authorized to levy and assess a	No
"Town Road Drainage Tax?"	Yes

If a majority of the votes cast on the proposition be in the affirmative, the town board shall have authority to levy annually a tax as hereinbefore provided until such time as the electors at an annual town meeting upon like procedure shall have voted by a majority vote of those voting on the question to withdraw from the town board authority to levy such town

road drainage tax. The votes on such question shall be canvassed and the result declared and recorded in the manner provided by law with reference to the election of town officers. ('13 c. 235 § 59, amended '17 c. 259 § 4)

1917 c. 259 § 4 amends 1913 c. 235, § 59, by adding a new subdivision (9), as above set forth.

2547. Special duties of overseer—Whenever any public road in a town becomes obstructed or unsafe from any cause, the overseer shall immediately repair such road, and render his account therefor to the town board, in case of a town or county road, and to the county board in case of a state road. ('13 c. 235 § 60, amended '15 c. 116 § 13)

Liability of township highway officers for injuries resulting from an open culvert without lights, guards, or warnings (125-507, 147+648, 52 L. R. A. [N. S.] 142). Highways, ~~§~~ 198.

APPEALS FROM COUNTY AND TOWN BOARDS

2548. Who may appeal—Bond—Notice—

Cited (129-392, 152+761).

2550. Proceedings on appeal—

The case is tried on appeal on the facts as they exist at the time of the trial (122-134, 141+1115). Private Roads, ~~§~~ 2.

Requested instructions held covered by the general charge, and properly refused (122-20, 141+810). Trial, ~~§~~ 280(1).

Evidence held to sustain verdict as to propriety and necessity for alteration of highway (122-20, 141+810). Highways, ~~§~~ 72(4).

GENERAL PROVISIONS APPLICABLE TO ALL ROADS

2552. Requirements for vehicles on highways—Subdivision (1). When persons meet on any road or bridge, traveling with vehicles, each shall seasonably drive to the right of the middle of the traveled part of such road or bridge, so that the vehicles may pass without interference.

The driver of any vehicle passing another vehicle traveling in the same direction shall drive to the left of the middle of the traveled part of the road, and if such road be of sufficient width to permit such passing, the driver of the leading vehicle shall not obstruct the same.

Subdivision (2). The driver of any vehicle approaching or crossing a street or highway intersection shall give the right of way to any other vehicle approaching from his right on the intersecting street or highway, and shall have the right of way at such crossing over any vehicle approaching from his left on such intersecting street or highway. The provisions of this subdivision shall be applicable in boroughs, villages and cities, except at such street intersections therein where and when a police officer shall be in actual charge of the regulation of traffic at any such intersection of streets. ('13 c. 235 § 65, amended '17 c. 119 § 22)

REGULATIONS AFFECTING ABUTTING OWNERS

2557. Removal of fences—Whenever a town or county board has established a road through inclosed, cultivated or improved lands, under any of the provisions of this act, and its decision has not been appealed from, or, if appealed from, its order has been sustained, it shall give each owner or occupant of land through which such road is established twenty days' notice, in writing, to remove his fences, and if he does not remove them within such time, it shall cause them to be removed and the road to be opened and worked. ('13 c. 235 § 70, amended '17 c. 119 § 23)

2558. Seeding roads—Trees—

Rights and duties of abutting owner and telephone company in respect to trees planted in the street (122-424, 142+807). Telegraphs and Telephones, ~~§~~ 10(15), 15(3).

2560. Hedges and trees within road limits—Subdivision (1). The town boards of supervisors, as to town and county roads, and the county board as

to state roads, are hereby given the right and power to determine upon the necessity and order the cutting down of hedges and trees within the road limits. Provided, that trees, other than willow trees, shall not be so cut down unless the center of such trees is more than six (6) feet inside the limits of any road established by statutory proceedings or dedicated specifically to public use; provided such trees or hedges, or either of them interfere with keeping the surface of the road in good order, or cause the snow to drift on to or accumulate upon said road in quantities that materially obstructs travel.

Subdivision (2). Owner to be notified, etc.—When a board shall determine that such cutting down of hedges or trees within the limits of such roads is necessary or that the same would aid materially in keeping such roads in repair or free from snow, it shall notify the owner or owners of the abutting lands of such decision and order the trees or hedges cut down within thirty days after such notice. If the said owner or owners fail or refuse to comply with such notice and order within the time specified, the said board shall have the power to cause such trees or hedges to be cut down at the expense of the town or county. The timber and wood of such trees shall belong to the said owner or owners of the abutting land, provided they pay the expense of cutting down said trees or hedges and remove the same from the roadside within thirty days. If such timber or wood is not removed within said time, the board shall sell the same or destroy it if it cannot be sold at a profit, and if sold, pay the proceeds thereof into the road and bridge fund of said town or county as the case may be. ('13 c. 235 § 73 subds. 1, 2, amended '15 c. 116 § 14; '17 c. 119 § 24)

Subdivision (3). Expenses, how to be paid—The town boards of supervisors and the county boards are hereby granted the further right and power to appropriate and pay out of their respective road and bridge fund, or from any other fund available the cost of cutting down such trees and hedges and the removal or destruction of the same, if done at public expense. ('13 c. 235 § 73, amended '15 c. 116 § 14)

2562. Road on mineral lands—Whenever a public road crosses mineral land or other lands outside the limits of any city, village or borough, which the owner or lessee desires to mine in such way as to remove the supports of the road or to improve said land by building any structure or building thereon, he may, at his own expense, change such road to other land, and make a new road thereon suitable for public travel; provided that no such change of road on lands other than mineral lands shall be made unless the same be first approved by the town board and the commissioner of highways, and the new road be first constructed and approved by said town board and said commissioner of highways, and, if he cannot obtain such land upon reasonable terms, the county or town board or the city or village council, as the case may be, upon requisite petition, shall make such change under the provisions of law for establishing roads. Provided, however, that before any such road is changed a sixty days notice of the intention of the owner or lessee thereof to change the same shall be served upon the board of the municipality in which the road is situate, by filing with the clerk thereof a declaration of such intention in the form of said notice; and provided, however, that the said owner or lessee shall be liable to the owner or occupant of any land abutting upon said road or any affected by such change to the extent of the damage sustained by reason of such change, and for the recovery of which an action may be brought after such change is made. In case such board or council desire to establish a road over mineral lands, it may agree with the owner or lessee of the land that, in case he shall consent to its establishment, its location shall be changed upon his request. Provided, however, that before such road will be changed by any such board or council, ninety days notice thereof shall be posted in three conspicuous places along said road, which said notice shall state the time when said road shall be changed. ('13 c. 235 § 75, amended '17 c. 119 § 25)

2563. Dedication by user—

To establish a highway under this section the proof must show not only travel by the public, but that it has been worked or kept in repair by the public for a prescribed period (125-353, 147+244). Highways, § 5.

Where a four-rod road was established on a section line, and before the road was laid out plaintiff built a fence more than four rods north of the center of the road as laid out, and public travel deviated to the north of the four-rod road limit, but at no place less than a rod from the fence, the deviation was not notice to the landowner, setting in motion the statute, the travel and use by the public having been with reference to a legal highway laid out on the section line (132-460, 157+715). Highways, § 7(3).

Evidence held to establish a highway by statutory user (125-353, 147+244). Highways, § 17.

2567. Town and county boards to construct culverts—The town boards, as to town roads, and the county boards, as to county and state roads, are hereby required to install one substantial culvert for an abutting owner in cases where by reason of grading a public highway, the same is rendered necessary for a suitable approach upon said highway over driveways from abutting lands. ('13 c. 235 § 80, amended '15 c. 116 § 15)

MISCELLANEOUS PROVISIONS

2568. Condemnation of gravel beds, etc.—Whenever any county or town board or common council of any village or city shall deem it necessary for the purpose of building or repairing public roads or streets within its jurisdiction, it may procure by purchase or condemnation, in the manner provided by law (the procedure in such condemnation proceeding shall, as near as practicable, be that provided in chapter 41 of the Revised Laws of Minnesota for 1905 and such procedure shall apply to condemnation proceedings under this section), any plot of ground, not exceeding twenty acres, containing gravel or stone, or clay, or sand or one or more of such road materials, suitable for road purposes, together with the right of way to the same of sufficient width to allow teams to pass, and on the most practicable route to the nearest public road. ('13 c. 235 § 81, amended '17 c. 119 § 26)

2570. Bridges over navigable streams, etc.—Rates of toll—Any corporation organized for the purpose, or any counties, towns, cities or villages interested, may jointly or separately erect and operate a bridge or bridges over any navigable stream constituting a boundary thereof together with suitable approaches, and such approaches may include the improvement of main highways for a distance not exceeding ten miles from the bridge. A county, town, city or village shall be deemed interested in bridges located outside of and within three miles of its corporate boundaries as well as those within or along its boundaries. Before any such bridge is erected over the Minnesota or the Mississippi river, the location and plan thereof shall be approved by the Governor. Bridges over the Minnesota river below the borough of Le Sueur shall be built with a suitable draw of not less than eighty foot opening, or in lieu of such opening shall be built at such clear height above the ordinary high water stage as shall be sufficient to accommodate the ordinary navigation of the river. All bridges over navigable waters of the United States shall receive the approval of the Secretary of War before construction. All draws shall be opened on reasonable signal or notice to allow the passage of vessels.

The county board of each county interested shall have power to levy, at or after the time of making a contract for any such bridge, a tax on all the taxable property of the county, sufficient to pay such county's agreed share of the cost of the bridge and approaches and interest thereon. Such tax shall be collected in annual installments corresponding to the amounts of interest and principal of certificates or bonds as herein provided falling due from year to year. The county board may issue and sell special bridge certificates of indebtedness or bonds of the county sufficient in amount to pay the county's agreed share of the cost of the bridge and approaches and engineering and other expenses incidental thereto, the principal of which certificates of indebtedness or bonds shall mature and be payable in not more than fifteen annual installments as nearly equal as practicable, and the first annual installment of principal shall mature not more than five years after the contract is ordered.

Such certificates or bonds shall be sold in the manner provided by Section 1856, General Statutes 1913, to the purchaser who will pay the par value thereof, at the lowest interest rate, and the certificates or bonds shall be drawn accordingly, but the rate of interest shall in no case exceed four and one half per cent per annum, payable annually or semi-annually. The county auditor shall extend the tax so levied by the county board in sufficient amounts from year to year to cover the interest and principal as they mature. The credit of the county shall be pledged to the payment of the principal and interest of such certificates or bonds. Certificates or bonds not exceeding in principal amount one-fifth of one per cent of the assessed valuation of the taxable property of the county, not including the valuation of moneys and credits, may be issued and sold without submission to the vote of the people.

Any corporation maintaining a bridge under this section may charge and receive the following rates of toll from all persons using the same: For each foot passenger or bicycle rider, five cents; for each hog, sheep or calf, two cents; for each head of cattle, five cents; for each vehicle or sleigh drawn by one animal, twenty cents; for each additional animal used, five cents; for each automobile, twenty cents; for any other vehicle or animal, a reasonable rate of toll. Such rates of toll may be changed by law whenever the net annual income from such bridge shall exceed a reasonable percentage of the cost thereof. ('13 c. 235 § 83, amended '17 c. 43 § 1)

2573. Final payment on road contract.—Final payment shall not be made on any contract for road work by any county or town board until the county board or town board, as the case may be, has examined the work and certified that the same has been properly done and performed according to contract and a certificate to that effect, signed by a majority of the members of the board making the inspection, shall have been filed in the office of the county auditor of the county, or town clerk of the town, as the case may be. Any county auditor or any town clerk who issues a warrant or an order in final payment upon a road contract where the amount involved in such contract exceeds the sum of two hundred dollars, until such certificate shall have been filed, shall be deemed guilty of a misdemeanor. The provisions of this section shall not apply to any county now having or which may hereafter have a population of one hundred fifty thousand (150,000) inhabitants or over and a county superintendent of highways, or other officer to superintend the construction or improvement of roads within its confines. ('13 c. 235 § 86, amended '15 c. 116 § 16)

2574. Commissioner of highways to inspect bridges, etc.—The commissioner of highways shall each year, so far as time and conditions permit, cause an inspection of all bridges exceeding thirty (30) feet in length, to be made by an assistant engineer. The assistant engineer shall report to the commissioner the conditions found to exist affecting the safety of the bridge and such other matters as to him shall seem important, together with his recommendations in reference thereto. The commissioner shall cause a copy of such report and recommendations to be transmitted to the county auditor of the county in which the bridge is situate. ('13 c. 235 § 87, amended '17 c. 119 § 27)

2575. Reconstruction or repair of certain bridges and roads— * * *

Subdivision (3). Roads, etc.—Whenever five or more freeholders and voters of a town present a complaint in writing to the county board of the county reciting that a described road therein is neglected by the town and that by reason of such neglect such road is impassable, the county board shall by resolution fix a time and place when and where it will consider such complaint and thereupon the county auditor shall mail a copy of the complaint, together with a notice of the time and place when and where the county board will meet to consider the complaint, to the town clerk of the town, and shall also notify the persons signing the complaint of the time and place of such meeting. At the designated time and place the county board shall consider such complaint and hear and consider such testimony as may be offered by the officers of the town, or the persons filing the complaint, rela-

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tive to the truth of the matters therein set forth. The chairman of the board or the presiding officer thereof may administer oaths to witnesses and require them to testify under oath.

If upon such hearing the county board shall be of the opinion that the complaint is well founded, it shall by resolution direct the town board to do such work or make such improvements as it shall deem necessary to put such road in a passable condition. Such resolution shall specify generally the work which it is so deemed necessary to do. The county auditor shall cause a copy of such resolution to be mailed to the town clerk of the town complained of, and if such town for a period of thirty days after the mailing of such notice shall fail or neglect to do the work or make the improvements set forth in such resolution, the county board may cause such work to be done or improvement made and pay therefor from the county road and bridge fund; provided, however, that the amount annually spent by any county board in any town under the provisions of subdivision three, section 28 of this act shall not exceed one mill on the dollar of the taxable valuation of said town.

When any county board shall have performed any work or made any improvement on any such road it shall cause to be prepared in duplicate an itemized statement of the cost of such work or improvement. One of such statements shall be filed with the county auditor and the other copy thereof shall be by the county auditor mailed to the town clerk of said town. The town clerk shall forthwith notify the several members of the town board that such a statement has been filed and that a meeting of the town board to act thereon will be held at a time to be specified in such notice, not later than ten days after the receipt of such notice from the county auditor. The town board shall meet at the time and place specified in the notice so given by the clerk and levy a special tax upon all the taxable property in the town in an amount sufficient to pay the amount expended by the county in performing such work or making the improvement. Such tax so levied shall be certified to the county auditor on or before October 15 next succeeding, and the county auditor shall extend the same with other town taxes upon the tax list of such town. Such tax shall be collected and the payment thereof enforced in the same manner and subject to the same penalties and interest as other town taxes. When collected such tax shall be paid into the county treasury to the credit of the county road and bridge fund and in making his settlements with the town, the county treasurer is hereby authorized to withhold from payment to the town the amount of such special tax theretofore collected.

Performance by the town board and the town clerk of the respective duties hereby imposed on them may be enforced by mandamus. ('13 c. 235 § 88, amended '17 c. 119 § 28)

1917 c. 119 § 28 adds the above subdivision.

Town officers are not liable for injuries resulting from their failure to keep a highway in repair (134-41, 158+725). Highways, ~~§~~ 198.

2576. Obstruction of or damage to highways—Penalty—Any person who shall obstruct any of the public highways of this state in any manner, or who shall dig any holes therein, or remove any earth, gravel or rock therefrom, or any part thereof, or who shall in any manner obstruct any ditch on the side of any such highways, and thereby damage the same, shall be guilty of a misdemeanor. It is hereby made the duty of the county attorney to prosecute all violations of the provisions of this section, occurring in his county. ('13 c. 235 § 89, amended '15 c. 116 § 17)

Civil liability to abutting owner (see 127-440, 149+669).

2577. Removing snow—It shall be the duty of the town board of each town, so far as funds are available for the expense thereof, to keep all town, county and judicial roads therein in a passable condition by the removal of snow therefrom; and for that purpose the road overseer is authorized to employ, by and with the consent of the town board, such men and teams as may be necessary for the purpose. The town board may also provide for the erection of snow fences when deemed advisable.

It shall be the duty of the county board, so far as funds are available for the expense thereof, to keep all state roads and state rural highways therein in a passable condition by the removal of snow therefrom. ('13 c. 235 § 90, amended '17 c. 119 § 29)

2578. Laws repealed—

125-325, 146+1110; note under § 2605.

OTHER MISCELLANEOUS PROVISIONS

2584. Road and bridge fund in certain counties—Exclusive control—

161+222; note under § 2585.

This section gives counties having more than 150,000 population authority to construct bridges and approaches within villages without the consent and concurrence of the village, and hence the county and not the village is liable for damages to private property from the construction of an embankment in the highway (130-359, 153+738). Bridges, ¶7.

2585. Same—Moneys, how expended—Contracts, how let—

130-359, 153+738; note under § 2584, ante.

In the improvement of highways, the acts of the county board, within the general scope of its powers and duties, are the acts of the county; so that, if such acts result in damage to adjacent lands, for which a private owner would be liable if caused by acts done by him on his own lands, such county would be liable (161+222). Highways, ¶118.

2586. Same—Duties of county surveyor—

161+222; note under § 2585.

[2593—]1. **Roads and bridges within villages, boroughs and towns, etc., in counties having valuation of more than \$200,000 and less than \$300,000—Powers of county board—**That in any county of this state, now or hereafter having a total assessed valuation of all its taxable property, as fixed by the state tax commission, of more than two hundred million dollars (\$200,000,000) and less than three hundred million dollars (\$300,000,000) the board of county commissioners shall have the authority to appropriate and expend within the limits of any village, borough or town located in such county, or upon any road, highway or bridge located upon or immediately adjacent to the boundary line between any city, village, borough or town and any other city, village, borough or town within such county, such sum or sums of money from the county road and bridge fund as said board shall deem proper, for the building, repairing or otherwise improving of any road or highway, including the construction and repairing of any bridge thereon. ('15 c. 73 § 1)

Section 2 repeals inconsistent acts, etc.

[2599—]1. **Bridges across Mississippi river in certain counties—Aid to cities of fourth class—**In all counties in this state bordering, in any part, on the Mississippi River, the county commissioners of any such county may by resolution duly adopted, aid and assist any city of the fourth class, situated on such river, and in or adjoining such county, in paying for, improving and keeping in repair, any bridge across such river, including approaches thereto, located upon or forming a part of any street or highway, either wholly or partly within its limits, when such bridge, street or highway shall form a part of, or connect with, any state road, state rural highway or public street or highway leading into or through such city or into or through such county or counties. ('15 c. 94 § 1)

[2599—]2. **Same—Aid, how paid, etc.—**Such aid may be given once in each year and shall be paid into the city treasury of such city out of the Road and Bridge fund or funds of such county or counties or out of the allotment to such county or counties from the State Road and Bridge fund, and shall not in any one year exceed \$5,000.00 from any one of such counties. ('15 c. 94 § 2)

[2599—]3. **Same—Resolution—**Where the county commissioners of any such county decide to aid and assist any such city in paying for, improving or keeping in repair any such bridge as herein specified, they may at any regular or special meeting thereof adopt a resolution for that purpose, which

resolution may be in substantially the following form: "Be it resolved by the county commissioners of the county of—That the sum of \$— be and the same hereby is appropriated out of the Road and Bridge fund of this county (or out of the allotment for this county from the State Road and Bridge fund) to aid and assist the city of—, in the county of—, in paying for, improving and keeping in repair the bridge across the Mississippi River at the city of—; and the county treasurer of this county (or the State Highway Commission) is hereby directed to pay into the city treasury of said city of— said sum of \$— out of any moneys belonging to said funds.

Chairman."

('15 c. 94 § 3)

[2599—]4. **Same—By and to whom paid**—Upon receipt of a certified copy of any such resolution by the State Highway Commission, or by the county treasurer of the county adopting the same, it shall be the duty of such State Highway Commission or such county treasurer, as the case may be, to pay the sum therein stated into the city treasury of such city and to charge the amount so paid to the fund or funds stated in such resolution. ('15 c. 94 § 4)

[2599—]5. **Same—How expended, etc.**—All money appropriated to any city under the provisions of this act shall be expended thereby for the purposes herein authorized, and it shall be the duty of the clerk of such city, on or before the first day of January of each year, to prepare and file with the county auditor of the county making the appropriation, an itemized statement showing to whom and for what purposes the same had been used or expended. ('15 c. 94 § 5)

[2602—]1. **Constructing, etc., roads by day labor in counties having less than 200,000 inhabitants—Claims, how allowed**—Where any county having a population of less than two hundred thousand inhabitants is engaged in constructing, improving, maintaining or repairing any public road by day labor, it shall be lawful for the county auditor and county treasurer to pay the claims of the laborers who have performed manual labor on said roads, for such labor, and the claims of persons who have furnished teams and wagons or plows or scrapers in the performance of work on such roads for the use of such teams and such equipment, without such claims having first been audited and allowed by the county board, provided such claims shall be evidenced and authenticated as herein provided, and be in the form as hereinafter provided. ('15 c. 182 § 1, amended '17 c. 69 § 2)

Section 1 amends the title of 1915 c. 182.

[2602—]2. **Same—Time checks**—The county board may authorize the overseer, superintendent or foreman designated by it to have charge of the construction, improvement or maintenance of any road, to issue time checks with reference to such road work, which time checks shall be issued and be in the form hereinafter prescribed, provided, however, that the aggregate amount of the time checks so issued by any overseer, superintendent or foreman, as to any one road, shall not exceed such amount as shall have been previously specified by resolution of the county board.

Any overseer, superintendent or foreman so authorized, shall, on the 15th and last days of each calendar month, issue to all persons who have performed manual labor in the carrying on of such work, or who have furnished a team or teams with wagon, plow or scraper, a time check, so-called, for all labor performed by the person to whom the same is issued for labor on the road designated, or for the hire of teams and wagons, plows or scrapers upon the road work specified therein, prior to the date of the issuance of the same, and as to which no time check has been previously issued.

Such time check shall be substantially in the form hereinafter set forth, to-wit:

TIME CHECK

To the County Auditor and County Treasurer of County, Minn.

This is to certify that..... is entitled to have and receive from County, Minnesota, the sum of dollars for labor performed and for team.... furnished on and in and about the construction, improvement or maintenance of Road No. as shown by the hereto attached schedule.

Beginning, Ending, 191.....

(Here indicate hours of employment of labor or teams on each date.)

Date		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Tot'l Hrs.	Rate	Amounts	
Con- struc- tion	Man hours																																			
	Team hours																																			
																																	Total			
Date		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Tot'l Hrs.	Rate	Amounts	
Main- te- nance	Man hours																																			
	Team hours																																			
																																	Total			
and I further certify that the foregoing is true and correct and that the labor above specified was actually performed and that the team or teams therein specified were actually used and employed in and on the work of constructing, improving or maintaining said road and that no time check has heretofore been issued to said person for said labor or for the hire of said team..... for the time above specified.																																Deduct for				
																																Balance due				

Dated at this day of 191.....

.....
Overseer, Superintendent or Foreman.

State of Minnesota } ss.
County of }

..... being first duly sworn, deposes and says that the within account is just and true that the labor has been performed and is of the value stated, that no part thereof has been paid.

Subscribed and sworn to before me this day of 191.....

.....
.....

The overseer, superintendent or foreman issuing any such time check shall fill in all the blank spaces therein, indicating therein the hours of labor performed on each date. He shall sign the same before delivering it to the person in whose favor it is issued. Such time check shall be made out in duplicate; one copy thereof shall be delivered to the claimant and the other shall be forthwith delivered to the county auditor. The auditor shall not issue a warrant to the claimant until he shall have compared the copy delivered to him with the copy delivered to the claimant, nor in any event unless the two copies are alike, nor shall he issue such warrant unless the copy presented by the claimant shall have been verified by the oath or affirmation of the claimant, nor until such claimant shall surrender to the auditor the copy of such time check delivered to him. Every such overseer, superintendent or foreman is hereby authorized to administer such oath or affirmation to any such claimant. Upon the surrender to him of such time check the auditor may issue a warrant therefor which warrant shall be payable by the county treasurer. The auditor shall endorse upon the time check so surrendered, the date of payment thereof and the number of the warrant issued therefor.

If any person who would otherwise be entitled to the issuance to him of a time check on the 15th or last day of any month quits the employment of the county, or is discharged therefrom before such dates, the overseer, superin-

tendent or foreman, as the case may be, shall thereafter and within twenty-four hours after the termination of such employment, issue to such person a time check as herein provided. ('15 c. 182 § 2)

[2602—]3. Same—Fraudulent issue of time checks—Penalty—It shall be unlawful for any person to issue any such time check in the assumed capacity of overseer, superintendent or foreman without first having been authorized so to do by the county board. It shall be unlawful for the overseer, superintendent or foreman to knowingly issue and deliver to any person any false or fraudulent time check. It shall be unlawful for any person to alter or change any time check issued by any overseer, superintendent or foreman. Any person violating any of the provisions of this section shall be guilty of a felony and punished by imprisonment in the state prison for not more than five years. ('15 c. 182 § 3)

[2602—]4. Conditions of federal aid road law accepted—Duty of state highway department—That the State of Minnesota hereby accepts and assents to the provisions and conditions of the federal aid road law approved July 11, 1916, being an act entitled, "An act to provide that the United States shall aid the states in the construction of rural post roads and for other purposes" as required of section 1 of said act, and the state highway department is hereby authorized and directed to co-operate with the secretary of agriculture of the United States in the construction of rural post roads. ('17 c. 75 § 1)

[2602—]5. Same—County boards to levy tax, etc.—The board of county commissioners of any county in this state may at any regular or special meeting ascertain and levy a tax for the construction and maintenance of roads in an amount sufficient to meet the sum required for such road by the federal aid road law. Such levy shall not exceed 5 mills in counties having a valuation of less than \$10,000,000; and shall not exceed 3 mills in counties having a valuation of \$10,000,000 and not over \$25,000,000; and shall not exceed 1 mill in counties having a valuation of more than \$25,000,000. Such taxes shall be levied, extended and collected the same as other taxes are levied, extended and collected. The sum so raised shall be used solely to comply with requirements of the federal government. ('17 c. 75 § 2)

[2602—]6. Federal aid in certain counties—Resolution of county board—That whenever the county board of any county now or hereafter having a population of 150,000, or more, inhabitants, and a county superintendent of highways or other county officer, to superintend the construction or improvement of roads within its confines, desires to construct or improve any state road or part thereof, and receive aid on account thereof from the United States government under the provisions of the act of Congress entitled, "An act to provide that the United States shall aid states in the construction of rural post roads and for other purposes," approved July 11, 1916; the said county board shall by resolution designate the road or part thereof which it desires to so construct and improve and also set forth in said resolution, in a general way, the general nature of the construction or improvement which it desires to make thereon, and also in and by such resolution request the commissioner of highways to submit a project statement thereon setting forth such proposed construction or improvement, to the secretary of agriculture of the United States government for his approval. ('17 c. 433 § 1)

[2602—]7. Same—Duty of commissioner of highways—If the commissioner of highways deems such proposed construction or improvement of such a nature as to probably meet with the approval of the said secretary of agriculture, he shall submit a project statement with reference thereto to the said secretary of agriculture, with such recommendations as he deems advisable, having regard to the equitable division among the several counties of this state of the federal aid apportioned to this state by the secretary of agriculture under the provisions of said act of congress, and available during any given year. ('17 c. 433 § 2)

[2602—]8. **Same—County board to enter into contracts, etc.**—If any such project statement so submitted to the secretary of agriculture, shall be approved by the secretary, the county board may, in the name of the county, enter into all necessary contracts or agreements with said secretary of agriculture of the United States, as may be required or necessary to make such construction or improvement and receive federal aid thereon or therefrom; provided, however, that all plans and specifications for any such construction or improvement shall be prepared by, or approved by the commissioner of highways of this state, and the work and labor incidental to the making of such construction or improvement shall be done and performed under the direct supervision of the state highway department. ('17 c. 433 § 3)

[2602—]9. **Removing buildings upon roads, etc.—Interference with bridges, trees, poles, etc.**—Any person, firm or corporation moving or causing to be moved, any building or structure upon, across or along any public road, street, alley or highway, whether within or without any city, village or borough of the state, shall so move such building or structure as not to unnecessarily interfere with, damage or destroy any bridges, trees, hedges, fences, telephone or electric power poles, wires, or cables upon such road, street, alley or highway. ('17 c. 366 § 1)

[2602—]10. **Same—Temporary removal—Payment of costs, etc.**—Whenever it shall be necessary to displace or temporarily remove any guard rails on any bridge, or any fence, telephone or electric power poles, wires, or cables to permit the moving of any building or structure upon, along or across any such public road, street, alley or highway, the person, firm or corporation owning or maintaining such fence, poles, wires or cables, shall not be required to displace or temporarily remove the same nor shall any guard rails on any bridge be displaced or removed until the reasonable costs of such displacement or temporary removal have been paid or tendered by the person, firm or corporation, requiring such displacement or temporary removal; provided, however, that nothing in this section shall apply to any work being done upon any such public road, street, alley or highway by or for any municipality, nor to the moving of any building or structure 18 feet in height or less within the limits of any incorporated city. ('17 c. 366 § 2)

[2602—]11. **Payment for excess work on certain contracts authorized**—The board of county commissioners in any county of this state, wherein a road has been constructed at a contract price in excess of seventy-five thousand dollars, and the estimates furnished by the engineer in charge show that more than seventy-five per cent of the work covered by such contract has been completed, may, and is hereby authorized by unanimous vote to pay over to the contractor performing such work, not to exceed seventy-five per cent of any amount retained by the county on any such contract; provided, however, that no such payment shall be made to any such contractor until the surety or sureties on his bond shall consent to such payment; and provided further, that any such payment shall not be construed as a final acceptance of the whole or any portion of said work. ('17 c. 181 § 1)

STATE RURAL HIGHWAYS

2603-2609. [Repealed.]

See § [2609—]1.

2603—Liability on bond of contractor (see 133-336, 158+432; note under § 8245, post).

Under this section the county commissioners can neither omit assessments of benefits upon property subject thereto under the act, and obligate the county to pay one-half of the cost of the road, nor pay, in whole or in part, such assessments when made (125-325, 146+1110). Highways, §140.

This act is not invalid for uncertainty (129-165, 151+899). Statutes, §47.

This act is not unconstitutional, as conferring legislative powers on the judiciary (129-165, 151+899). Constitutional Law, §61.

The act is not invalid because it places no limit on expenditure or issuance of bonds. The bonds may be issued serially. Bonds issued are general obligations of the county (129-165, 151+899). Counties, §150(1), 183(1), 184.

The act is not invalid in respect to the mode of distribution of the cost of the improvement, though there is no provision for interest to be paid by the county and state, and the act permits the state to pay in annual installments, or when funds became available (129-165, 151+899). Counties, ~~§~~174.

The viewers need not determine special and general benefits, it being enough that the special benefits exceed one-fourth of the cost of construction (129-165, 151+899). Highways, ~~§~~140.

2605—129-165, 151+899; notes under § 2603.

The state highway commission is required to approve the petition, but not the order of the county board establishing the highway; but, the petition being approved, a subsequent order approving the order of the board is not prejudicial error (132-36, 155+1048). Appeal and Error, ~~§~~1050(2); Highways, ~~§~~53(1).

An order of the county commissioners establishing a state rural highway under this law is not affected by the amount to the county's credit in the state road and bridge fund for the current year (125-325, 146+1110). Highways, ~~§~~99.

2606—125-325, 146+1110; note under § 2605.

An issue of bonds by the county for the cost of the whole construction is not invalid. That the county is made a taxing district, and that persons residing in municipalities within the county are taxed for the cost of the highway, does not render the act invalid (129-165, 151+899). Counties, ~~§~~149, 174; Highways, ~~§~~126.

2609—129-165, 151+899; notes under § 2603.

This section, in view of § 2603 et seq., does not permit the county commissioners to omit assessments upon property benefited, and obligate the county to pay one-half of the cost of the road, to pay, in whole or in part, assessments made (125-325, 146+1110). Highways, ~~§~~140.

[2609—]1. 1911 c. 254 repealed—Highways heretofore constructed—Pending proceedings—That Chapter 254, General Laws of Minnesota for 1911 [2603-2609], entitled, "An Act providing for the laying out and construction of highways outside of cities and villages and for the substantial improvement of the same and for the payment for the same by the state and county and by the assessment of benefited lands," be and the same is hereby repealed; provided, however, that said act shall continue and remain in full force and effect with respect to all state rural highways heretofore constructed thereunder, or in process of construction thereunder and in all proceedings now pending thereunder where the petition for any such rural state highway has been filed with the county auditor, and the first hearing thereon has been held by the county board or judge of the district court as in said act provided. ('15 c. 52 § 1)

[2609—]2. Certain proceedings under 1911 c. 254 legalized—In all cases where a petition for the laying out, construction or substantial improvement of a state rural highway has heretofore been approved by the appropriate county board or county boards and by the State Highway Commission in attempted compliance with the provisions of Chapter 254, General Laws, 1911 [2603-2609], such petition and approval, and all subsequent proceedings in reference to such highway, and to the laying out, construction or substantial improvement thereof whether taken by such county board or county boards, or by the county auditor of any such county, by said State Highway Commission or by any district court, are hereby legalized and declared valid. ('15 c. 126 § 1)

[2609—]3. Same—Pending appeals, actions, etc.—This act shall not apply to or affect the right of appeal from said proceedings as now provided by law, or any actions or appeals now pending in which the validity of said proceedings is called in question. ('15 c. 126 § 2)

[HIGHWAY TRAILS]

[2609—]4. Registration—Power of state highway commissioner—Any corporation or association organized to promote the improvement, marking or blazing of any continuous highway, not less than twenty-five miles of which is in the state of Minnesota, may, by making application to the state highway commission, register in the office of said commission the name, detailed route, color, combination and design used in marking said highway as a trail. The highway commission shall have the power to determine priority

of right in the use of the said name, color, combination and design. ('17 c. 318 § 1)

[2609—]5. **Application—Fee**—The application shall be in the form prescribed by the highway commission upon blanks furnished by it, and shall be properly acknowledged by the president and secretary of the corporation or association before any officer authorized to administer oaths. Each such application shall be accompanied by a registration fee of \$5.00, which fee shall be returned if the application be not granted. ('17 c. 318 § 2)

[2609—]6. **Certificate—Records**—If the state highway commission shall after investigation adjudge the application to be meritorious and the highway and trail to be worthy of the protection of this act, it shall issue to the corporation or association a certificate which shall designate in detail the starting and the terminal points, the color, combination and design to be used in marking and designating such highway as a trail; all such facts shall be recorded as a part of the permanent records of the commission, in a book to be kept for that purpose. Said corporation or association shall have the exclusive right to the use of such name, color, combination and design in trail or highway designation and marking. ('17 c. 318 § 3)

[2609—]7. **Use of same name, color, etc., prohibited**—It shall be unlawful for anyone other than the corporation or association to whom such certificate is issued, to use for similar or like purpose the name or any recorded color, combination and design herein referred to. ('17 c. 318 § 4)

[2609—]8. **Injuring or defacing sign boards, etc.—Penalty—Forfeiture, etc.**—Any person who shall injure or deface any signboard, distance marker, design or other marking designating highways or trails established in accordance with this act, shall be guilty of a misdemeanor. It shall be the duty of the state highway commission, on satisfactory proof that any signboard, distance marker or other marking established by any such association under the provisions of this act is misleading or untrue, to order the removal of such signboard, distance marker or other marking, and any association which shall fail to comply with any such order within thirty days after notice thereof shall forfeit its right to the exclusive use of any design registered under the provisions of this act. ('17 c. 318 § 5)

[2609—]9. **Cancellation of registration, etc.**—When any such corporation or association shall cease to exist, or when the interest in any such designated highway or trail, name and markings has ceased, the state highway commission may, after proper investigation, cancel the records and registration herein referred to, and re-assign such name, color, combination, designs or other markings to any other corporation or association making application for their use. ('17 c. 318 § 6)

[2609—]10. **Fees credited to road and bridge fund**—All fees received by the state highway commission under this act shall be turned into the state treasury, and shall be credited to the state road and bridge fund. ('17 c. 318 § 7)

[2609—]11. **Penalty for violation**—Any person violating any of the provisions of this act shall be guilty of a misdemeanor. ('17 c. 318 § 8)

MOTOR VEHICLES

2619. **Definitions**—The term "motor vehicle" as used in this act, except where otherwise expressly provided, shall include all vehicles propelled by any other than muscular power, except traction engines, road rollers, fire wagons and engines, police patrol wagons, ambulances, and such vehicles as run only upon rails or tracks. The term "local authorities" shall include all officials of counties, cities, towns and villages. The term "Chauffeur" shall mean any person operating or driving a motor vehicle as an employee, but shall not include automobile salesmen, or mechanics, while demonstrating or testing automobiles. The term "state" as used in this act, except where otherwise

provided, shall also include the territories and the federal districts of the United States. The term "owner" shall also include any person, firm, association or corporation owning or renting a motor vehicle, or having the exclusive use thereof, under a lease or otherwise, for a period greater than thirty (30) days. The term "public highway" shall include any highway, town road, country road, state road, public street, avenue, alley, park, parkway or public road in any county, city, town or village, except any speedway which may have been or may be expressly set apart by law for the exclusive use of horses and light carriages. (Amended '15 c. 33 § 1)

The fire apparatus of a city, while on its way to a fire, is excepted from this section, though the fire be outside the city limits (131-361, 155+204). Municipal Corporations, ~~6~~ 703(4).

2623. Number and tags—Upon the filing of such application and the payment of the fee as provided in section 2625, the Secretary of State shall assign to such motor vehicle owner a distinctive number, and without other fee, issue and deliver to the owner a set of two tags of registration, upon each of which shall be displayed the distinctive number assigned in the form and size provided in Section 2628, which shall be evidence of payment of license fee of such registration. In case the owner disposes of such motor vehicle following this registration and desires the number to accompany the motor vehicle, the purchaser must cause said registration to be transferred in the office of the Secretary of State, for which a fee of \$1.00 shall be charged. In the event of the loss, mutilation or destruction of a certificate of registration, the owner of a registered motor vehicle may obtain from the Secretary of State a duplicate thereof upon filing with the Secretary of State an affidavit showing such fact and upon the payment of a fee of one dollar (\$1.00). (Amended '15 c. 33 § 2)

2625. Registration fees—

See § [2625—]1.

[2625—]1. **Fees on and after January 1, 1918**—On and after January 1st, 1918, the fee for registering motor vehicles under the provisions of this act and referred to in Section 2625, General Statutes of Minnesota for 1913, shall be five dollars (\$5.00) for each motor vehicle for the triennial period commencing on January 1st, 1918; after January 1st, 1919, the fee for the remaining two years of said triennial period shall be three dollars and fifty cents (\$3.50); on and after January 1st, 1920, the fee for the remaining one year of said triennial period shall be two dollars (\$2.00) for each motor vehicle; no license for registering a motor vehicle shall be issued for less than two dollars (\$2.00); and the fee for registering manufacturers and dealers referred to under section 2629, General Statutes for 1913, shall be twenty dollars (\$20.00) for each manufacturer or dealer for the full triennial period, extra tags to be furnished for one dollar (\$1.00) per set. For each triennial period commencing with January 1st, 1921, the above schedule of license fees shall be in effect. ('15 c. 33 § 7)

2626. Tag to be displayed on vehicles, etc.—

That an automobile is not registered does not prevent recovery by the owner for injuries inflicted by the negligence of another, to which such failure to register in no way contributed (129-34, 151+542, L. R. A. 1915D, 628). Municipal Corporations, ~~6~~ 705(4).

2629. Registration by manufacturers and dealers—Every person, firm, association, or corporation, manufacturing or dealing in motor vehicles, may, instead of registering each motor vehicle so manufactured or dealt in, make a verified application, duly sworn to before a notary public of the county in which such person resides, or firm, association, or corporation has its principal place of business, upon a blank to be furnished by the Secretary of State, for a general distinctive number for all motor vehicles owned or controlled by such manufacturer or dealer, such application to contain:

1. A brief description of each style or type of vehicle manufactured or dealt in by such manufacturer or dealer, and
2. The name, residence and business address of such manufacturer or dealer.

On the payment of a registration fee of ten dollars (\$10.00), such application shall be filed and registered in the office of the Secretary of State in the manner provided in section 2620 of the statutes. There shall thereupon be assigned and issued to such manufacturer or dealer a general distinctive number of registration in the manner provided by said section 2620, which shall be in the form of plates, as provided for in said section 2628, duplicates of which shall be carried or displayed by every motor-vehicle of such manufacturer or dealer so registered when the same is driven or operated on the public highways. Such manufacturer or dealer may obtain as many duplicate sets of such tags of registration as may be desired upon payment to the Secretary of State of one dollar (\$1.00) for each set of duplicates. Nothing in this sub-division shall be construed to apply to the motor-vehicle operated by a manufacturer or dealer for private use or for hire. (Amended '15 c. 33 § 3)

2632. Brakes, horns, lamps, mufflers, etc.—Not to stand unattended, etc.—

Violation of this and the other section of this act relating to the care to be exercised by operators of motor vehicles is negligence per se (128-460, 151+275). Highways, Ⓒ181(3).

Contributory negligence of driver of an automobile truck, which came into collision with street car (125-389, 147+430). Street Railroads, Ⓒ114(15).

(2) Stopping on signal, and other regulations—

Operating without lights—Finding of negligence in operating an automobile at night without a light, rendering the operator liable for injuries to a pedestrian in the street, held sustained by the evidence (130-134, 153+267). Municipal Corporations, Ⓒ700(5).

Duty as to horses—Signals—When it is apparent that a team is frightened, it is the duty of an automobile driver to stop, though the driver of the team, whose attention is taken up in controlling his horses, does not signal the automobile to stop (127-188, 149+194). Highways, Ⓒ181(3).

The operator of a motor vehicle must stop on signal of a person in a vehicle, though such person is not driving (128-460, 151+275). Highways, Ⓒ181(3).

Passing street cars—The conductor of a street car, while standing in the street adjusting the trolley, is within the class of persons for whose benefit this section requires motor vehicles to slow down, and, "if necessary for the safety of the public," to stop not less than ten feet from a street car which is receiving and discharging passengers. While a street car is receiving and discharging passengers, pedestrians to and from the car have the right of way, and it is the duty of an automobile driver to stop, if necessary for their safety, and, if he does not stop, to exercise such care in the management of his machine as, under the circumstances, shall appear to be reasonably necessary to guard against injury to any one. Requisites of charge on duty of automobile driver in passing street car receiving or discharging passengers stated (127-468, 149+947). Municipal Corporations, Ⓒ705(4).

In view of the provision of this section as to passing or approaching street cars, one alighting from a standing street car is not obliged to keep a lookout for automobiles to avoid the imputation of contributory negligence (127-462, 149+940). Municipal Corporations, Ⓒ705(10).

Pedestrians—Evidence held to support a finding of negligence of an automobile driver in running down a pedestrian in the street (130-134, 153+267). Municipal Corporations, Ⓒ706(5).

The driver of a motor vehicle, who fails to observe the requirement as to slowing down and giving a signal on observing a pedestrian in the traveled part of the roadway, and not on a sidewalk, is liable for injuries proximately resulting from such failure, though his conduct may not have been negligent in the absence of statute (133-346, 158+426). Municipal Corporations, Ⓒ705(4).

2633. Speeds and signals at cross roads outside of cities and villages—
161+715.

2634. Road rules—
161+715.

The provision of this section limiting speed to four miles an hour in passing vehicles is not invalid as class legislation (128-460, 151+275). Constitutional Law, Ⓒ208(3).

Violation of this section constitutes negligence, rendering the operator of a motor vehicle liable for injuries proximately resulting therefrom (128-460, 151+275). Highways, Ⓒ181(3).

Where a motor vehicle, through no fault of its driver, skids on a slippery pavement, and is thus thrown across the center line of the street, the provision of this section as to keeping to the right of the center of the street is not applicable, so as to cast on defendant the burden of disproving negligence (127-401, 149+654). Municipal Corporations, Ⓒ702, 706(3).

Where defendant, in a sleigh, was coming up a hill on the left-hand side of the street, and collided with plaintiff's child, who was coasting, the provision of this section, requiring that "all vehicles must keep to the right of the center of the street," applied, and defendant's

act was evidence of negligence (130-46, 153+136, L. R. A. 1915E, 1028). Municipal Corporations, ~~§~~706(5).

A boy's sled is not a "motor vehicle," within the provisions of this section as to speed of motor vehicles, so as to impute contributory negligence to a boy coasting down a hill on a city street (130-46, 153+136, L. R. A. 1915E, 1028). Municipal Corporations, ~~§~~703(1).

2635. Rates of speed—No person shall drive a motor-vehicle upon any public highway of this state at a speed greater than is reasonable and proper, having regard to the traffic and use of the highway, or so as to endanger the life or limb or injure the property of any person. If the rate of speed of any motor-vehicle, operated on any public highway in this state, where the same passes through the closely built up portions of any incorporated city, town or village, or where the traffic is more or less congested, exceeds ten (10) miles an hour for a distance of one-tenth of a mile, or if the rate of speed of any motor vehicle, operated on any public highway of this state, where the same passes through the residence portions of any city, town or village, exceeds fifteen (15) miles an hour for a distance of one-tenth of a mile, or if the rate of speed of any motor-vehicle operated on any public highway in this state, outside the closely built up business portions, and the residence portions of any incorporated city, town or village, exceeds twenty-five (25) miles an hour for a distance of one-quarter of a mile, such rates of speed shall be prima facie evidence that the person operating such motor-vehicle is running at a rate of speed greater than is reasonable and proper, having regard to the traffic and use of the way, or so as to endanger the life or limb or injure the property of any person.

If the rate of speed of a motor-vehicle, operated on any public highway in this state, in going around a corner or curve in a highway, where the operator's view of the road traffic is obstructed, exceeds six (6) miles per hour, such rate of speed shall be prima facie evidence that the person operating such motor-vehicle is running at a rate of speed greater than is reasonable and proper, having regard to the traffic and the use of the way, or so as to endanger the life or limb or injure the property of any person.

If a licensed physician shall have his motor-vehicle stopped for exceeding the speed limit, while he is in the act of responding to an emergency call, the registration number of the vehicle, and the driver's license number may be inspected and noted, and the physician shall then be allowed to proceed in the vehicle to his destination, and subsequently such proceedings shall be taken as would have been proper had the person violating the provisions as to speed not been a physician. (Amended '17 c. 475 § 1)

127-401, 149+654; 130-134, 153+267.

The provision of this section as to speed is for the benefit of all who may be injured in person or property from unreasonable or excessive speed of automobiles, and it is a rule of evidence of general application whenever the question of unreasonable speed is involved (125-431, 147+434). Highways, ~~§~~166.

Contributory negligence of driver of an automobile truck in collision with street car (125-399, 147+430). Street Railroads, ~~§~~114(15).

2636. Duty of driver in case of accident—

125-466, 147+441.

2637. Local regulations prohibited—Exceptions—

The imposition of a wheel tax by a city, the proceeds of which were to be used for the maintenance and repair of highways within the city, is not forbidden by this section (134-296, 159+627). Licenses, ~~§~~5.

Violation of a speed ordinance by the driver of an automobile is negligence per se, and it is not rendered any the less so because the police of a city resolve not to enforce the ordinance (162+520). Municipal Corporations, ~~§~~705(4).

2638. Board of automobile examiners—Examination and licensing of chauffeurs—Revocation of license—Numbers and badges—Non-resident chauffeurs—There is hereby created a board of automobile examiners of three members, to be designated by the governor, who shall be men possessing a technical and practical knowledge of the construction, mechanism and operation of motor-vehicles, whose term of office shall be for two years, said first terms to expire on the first Tuesday of January, 1917. Said board members are to receive a compensation of five dollars per day and actual expenses, while

in session, and all traveling expenses. Blanks, books, etc., for the use of said board are to be furnished by the Secretary of State. It shall be the duty of said board to conduct the examination of all applicants for chauffeur's licenses herein provided for, at such times and such places as shall be designated by the Secretary of State; to pass upon the qualification of such applicants, and to issue to those having a practical knowledge of the construction, mechanism and operation of motor-vehicles, a license to be known as a chauffeur's license; provided that no such license shall be issued to any person under eighteen years of age, or who is an habitual and excessive user of intoxicating liquors or to any person of defective eye-sight, or other physical infirmity, which in the judgment of said board renders such person incompetent to manage and care for a motor-vehicle. Such licenses shall expire on December 31st of each year, and a new license shall be issued to the holder of the expired license upon the payment of one dollar; provided further, that upon the third conviction by any court of a violation of any of the provisions of this act the Secretary of State is hereby empowered and directed to revoke the license of any chauffeur so convicted, and said chauffeur shall not be entitled to receive a new license, or to have an expired license renewed or re-issued within six months after the revocation and expiration of his license, and then only upon and after he has been re-examined by the board, who shall, in their discretion, have the power to refuse to grant such license, if in their opinion the applicant is incompetent to manage and operate a motor vehicle. Application for license to operate a motor vehicle as chauffeur may be made by mail, or otherwise, to the Secretary of State, or his duly authorized agent, upon blanks prepared under his authority. Every such application shall be accompanied by a fee of one dollar and fifty cents (\$1.50). In case said applicant upon examination by the board of examiners shall have been found competent, and such fact has been certified to, the Secretary of State, the latter shall furnish to every chauffeur so licensed and whose license has been renewed, a suitable metal badge with the coat-of-arms of the State of Minnesota thereon, and with the distinguishing number or mark assigned to him thereon, said number to be of a different color each year, and the year to be embossed thereon, without extra charge therefor. This badge shall be thereafter worn by such chauffeur pinned upon the outside of his clothing, either upon his breast about midway between his shoulders, or upon the front of his hat or cap, at all times while he is operating or driving a motor-vehicle on public highways. Said license shall be valid only during the term of the license of the chauffeur to whom it is issued, as aforesaid. It shall also be the duty of said licensee to have said license at all times in his possession while operating a motor-vehicle in this state. Upon the receipt of such an application, the Secretary of State shall thereupon file the same in his office and register the applicant in a book or index which shall be kept in the same manner as the book or index for the registration of motor vehicles, and when the applicant shall have passed the examination provided for in the preceding section, the number or mark assigned to such applicant, together with the fact that such applicant has passed such examination, shall be noted in said book or index. No chauffeur having been licensed as herein provided shall voluntarily permit any other person to possess or use his license or badge, nor shall any person while operating or driving a motor-vehicle, use or possess any license or badge belonging to another provided, however, that a non-resident chauffeur, who has registered under the provisions of law of the foreign country, state, territory or federal district of his residence, substantially equivalent to the provisions of this section, shall be exempt from license under this section; and provided further, that he shall wear the badge assigned to him in the foreign country, state, territory or federal district of his residence in the manner provided in this section; provided further, that in case said chauffeur remains in this state for sixty (60) days or more, he shall be required to comply with all of the provisions of section 19 hereof. (Amended '15 c. 33 § 4)

2640. Intoxication of driver—Penalty—Whoever operates a motor vehicle while in an intoxicated condition shall be guilty of a misdemeanor.

Provided that any person convicted under this section shall forfeit any license which he may have to operate a motor vehicle under the laws of this state and shall also be disqualified to operate any motor vehicle for a period of three months after the date of such conviction, and provided further that any violation of this provision shall be a misdemeanor. (Amended '17 c. 320 § 1)

2641. Tampering with or damaging vehicle, etc.—No person shall tamper with or drive or operate or use a motor-vehicle without the permission of the owner, and no person shall, without authority of the person in charge, climb upon or into any automobile, whether while the same is in motion or at rest, or hurl stones or any other missiles at the same, or occupants thereof, or shall, while such motor vehicle is at rest and unattended, sound the horn or other signalling device, or attempt to manipulate any of the levers, starting crank, brakes or machinery thereof, or set such vehicle in motion, or otherwise damage or interfere with the same, nor shall any person place upon any street, avenue or highway of this state any glass, tacks, nails or other articles tending to injure automobile tires. (Amended '15 c. 33 § 5)

2642. Disposition of fees—Appropriation—Expenses—At the end of each month the Secretary of State shall pay into the state treasury, to the account of the general revenue fund of the state, all moneys received by him under this act, and file with the state auditor a verified statement of the amount and sources thereof. On or before the tenth of each month, the Secretary of State shall file a statement and certify to the State Auditor the items and amounts of all expenses necessarily incurred by him or board of examiners in the carrying out of this act, and such items and amounts, being duly audited, shall be paid by the state. The State Treasurer shall keep a separate account of all moneys received from motor vehicle licenses, and on the last day of each fiscal year shall transfer any balance in such account from the Revenue Fund to the Road and Bridge Fund. (Amended '15 c. 33 § 6)

2643. Suit for damages—Evidence, etc.—

The owner of an automobile is not liable for injuries to third persons from the negligence of his chauffeur, committed when wrongfully operating the automobile outside the scope of his employment, and contrary to the directions of the employer not to use the machine in his own personal affairs (130-412, 153+753). Master and Servant, ~~§~~302(1, 6).

CHAPTER 14

EDUCATION

DISTRICT SCHOOLS

2676. Appeal from order—

Cited (131-79, 154+669).

Section 875, providing for pleadings on appeals from orders of the board allowing or disallowing claims against the county, has no application to appeals under this section (135-439, 161+152). Schools and School Districts, ~~§~~39.

An appeal from an order denying a new trial in proceedings for a consolidation of school districts, under § 2688, held to have been taken in time; the order of the district court directing a dismissal of the appeal not being a final order (122-383, 142+723). Schools and School Districts, ~~§~~39.

The county superintendent of schools held not personally liable for costs in defending an appeal in consolidation proceedings (142+928). Costs, ~~§~~96.

Scope of review on appeal to district court from order of county board changing boundaries of school district (see 135-439, 161+152; note under § 2677, post).

2677. Change of boundaries of district—Enlarging boundaries in certain cases—Proceedings—Apportionment of debts—

In general—Under this section the county board may enlarge a school district having wholly within its limits an incorporated village of the character specified in the statute, by including lands wholly without such village, but contiguous to the district (130-25, 153+253). Schools and School Districts, §38.

The action of a county board in changing the boundaries of school districts held not arbitrary, fraudulent, oppressive, and against the best interests of the territory affected, so as to work manifest injustice (134-82, 158+729). Schools and School Districts, §39.

The interests of the rural districts from which lands are detached should not be considered independently from the interests of the urban district, so that the change should not be made, if not conducive to the interests of the inhabitants of any one of the districts (134-82, 158+729). Schools and School Districts, §42(2).

What territory "affected" by change—Land within the petitioning district is "territory affected" by the change (134-82, 158+729). Schools and School Districts, §32.

Appeal—What may be reviewed—On appeal to the district court from an order of the board of commissioners changing the boundaries of a school district, in proceedings under this section, the only question for review is whether the order was fraudulent, arbitrary, unjust, or an unreasonable disregard of the best interests of the territory affected, and where the evidence on that issue is in doubt the order should not be disturbed; the question of the propriety and necessity of the proposed change cannot be considered, as it is not a judicial question. The evidence in this case held insufficient to justify vacating the order of the county board (135-439, 161+152). Constitutional Law, §70(1); Schools and School Districts, §39.

An instruction by the court, on appeal to the district court in proceedings to change the boundaries of school districts, as to what territory was "affected" by the change, though inconsistent with other instructions, held not ground for reversal, in view of failure to object (134-82, 158+729). Schools and School Districts, §42(2).

There was no prejudicial error, if error at all, in not including in the consideration of what territory was affected land within districts that had not appealed from the order of the board (134-82, 158+729). Schools and School Districts, §39.

[2677—]1. **Certain proceedings for annexation of unorganized territory validated**—Wherever a petition shall have been heretofore presented to a board of county commissioners, purporting to have been signed by a majority of the freeholders or legal voters, residing within a school district, however organized, in said county, and qualified to vote at school meetings in said district, praying for the annexation of certain unorganized territory to said school district, and said board of county commissioners, after consideration of said matter shall have made an order granting said petition and annexing said unorganized territory to said school district, said territory shall in all things be deemed legally annexed to said school district, and all proceedings had for the annexation of said territory are hereby validated and confirmed;

Provided, that this Act shall not apply to any territory where an action may now be pending in any court involving the legality of any such annexation proceedings. ('15 c. 197 § 1)

[2677—]2. **Certain proceedings for annexation of unorganized territory validated**—Whenever a petition shall have heretofore been presented to a board of county commissioners for the annexation of certain unorganized territory to a school district, and said board of county commissioners, after consideration of said matter, shall have made an order denying said petition, and upon appeal to the district court, said court has ordered judgment granting the petition for such annexation, thereby reversing the action of the said county board, and certain proceedings have been taken by the school board and tax levies made subsequent to the making of said order and prior to the entry of the judgment of the court therein, said territory shall in all things be deemed legally annexed to said school district as and of the date of the making of said court order, and all proceedings had for the annexing of said territory and all acts of the school board of said district affecting said territory and all school levies affecting said annexed territory, are hereby legalized, validated and confirmed; provided that this act shall not apply to any school taxes levied against such annexed territory where in such tax proceedings an answer has been interposed in regard thereto and is now pending in any court. ('17 c. 173 § 1)

[2677—]3. **Same—Pending actions**—This act shall not affect or apply to any action or proceedings now pending in any court of this state. ('17 c. 173 § 2)

2686-2694. [Repealed.]

See § [2694—]12.

2687—The petition must state the location of the districts, by naming the county and state wherein they are situated (130-54, 153+112). Schools and School Districts, §38.

In connection with the presumption of naturalization from the act of voting, the evidence held to show that a resident of the state, born in Germany and who had voted many years in this country, was a citizen (123-119, 143+120). Citizens, §10.

The petition is jurisdictional, and must be signed by the required number of legal voters (122-383, 142+723). Schools and School Districts, §37(3).

Defects in petition, as affecting character of consolidated district as de facto public corporation (see 132-59, 155+1040). Schools and School Districts, §28.

The last day for posting notices of election in consolidation proceedings under this section was Monday, February 10th. Held, that notices tacked up on Sunday, the 9th, which remained up on Monday, the 10th, were valid; it being presumed that the notices remained posted on Monday (127-84, 148+891). Appeal and Error, §232(1); Schools and School Districts, §38.

Those who oppose a consolidation are not estopped to question a violation of the statute by participating in the election (122-383, 142+723). Schools and School Districts, §39.

2688—Failure to appeal under this section precludes persons participating in the proceedings from resorting to collateral attack such as by injunction, on the validity of the consolidation proceedings (132-59, 155+1040). Quo Warranto, §5.

An appeal from an order denying a new trial held to have been seasonably taken; the order of the district court directing a dismissal of the appeal from an order of consolidation not being a final order (122-383, 142+723). Schools and School Districts, §39.

2691—Contracts of a consolidated district are not invalidated by a subsequent judgment dissolving the district on account of defects in the proceeding for consolidation, since the consolidated district was a de facto corporation (122-383, 142+723). Schools and School Districts, §39.

[2694—]1. Consolidation of districts—Duties of county superintendent and superintendent of education—Approval of plat, etc.—Two or more school districts of any kind may consolidate either by the formation of a new district or by the annexation of one or more districts or unorganized territory to an existing district in which is maintained a state graded, semi-graded, or high school as hereinafter provided.

A district so formed by consolidation or annexation shall be known as a consolidated school district. Before any steps are taken to organize a consolidated school district, the superintendent of the county in which the major portion of territory is situated, from which it is proposed to form a consolidated school district, shall cause a plat to be made showing the size and boundaries of the new district, the location of school houses in the several districts, the location of other adjoining school districts and of school houses therein, and the assessed valuation of property in the proposed district, together with such information as may be of essential value, and submit the same to the superintendent of education, who shall approve, modify, or reject the plan so proposed, and certify his conclusions to the county superintendent of schools. ('15 c. 238 § 1)

[2694—]2. Same—State aid—To receive state aid as a consolidated school of Class A or Class B, as defined in this act, the consolidated districts must contain not less than twelve sections; provided, however, that when any consolidated school district shall have attained a valuation of \$200,000 and not exceeding \$1,000,000, and contains within its borders an incorporated village which consolidated district contains but ten sections such consolidated district shall have all the rights and privileges of a consolidated school district. Any existing school district having the area and meeting the requirements specified in this act, shall have the rights and privileges of a consolidated school district. ('15 c. 238 § 2)

[2694—]3. Same—Petition—Notice of election—After approval by the superintendent of education of the plan for the formation of a consolidated school district, and upon presentation to the county superintendent of a petition signed and acknowledged by at least twenty-five (25) per cent of the resident freeholders of each school district or area affected, qualified to vote at school meetings, who have been such freeholders for at least thirty (30) days immediately preceding the signing and acknowledging of the petition, asking for the formation of a consolidated school district in accordance with the plans approved by the superintendent of education, the county superintendent shall,

within ten days, cause ten days posted notice to be given in each district affected and one week's published notice, if there be a newspaper published in such district, of an election or special meeting to be held within the proposed district, at a time and place specified in such notice, to vote upon the question of consolidation. ('15 c. 238 § 3, amended '17 c. 470 § 1)

[2694—]4. **Same—Meeting of electors—Consolidation, how submitted—Duty of county superintendent if approved—Appeal—Indebtedness**—At such meeting the electors shall elect from their number a chairman and clerk, who shall be the officers of the meeting. The chairman shall appoint two tellers, and the meeting and election shall be conducted as are annual meetings in common and independent districts. The vote at such election or meeting shall be by ballot, which shall read "For Consolidation," or "Against Consolidation." The officers at such meeting or election shall, within ten days thereafter, certify the result of the vote to the superintendent of the county in which such district mainly lies. If a majority of the votes cast be for consolidation, the county superintendent within ten days thereafter shall make proper orders to give effect to such vote, and shall thereafter transmit a copy thereof to the auditor of each county in which any part of any district affected lies, and to the clerk of each district affected, and also to the superintendent of education. If the order be for the formation of a new district, it shall specify the number of such district. The county superintendent shall also cause ten days' posted notice, and one week's published notice, if there be a newspaper published in such district, to be given of a meeting to elect officers of the newly formed consolidated school district; provided, that the board of a consolidated school district shall from and after the formation of the consolidated district have all the powers, privileges and duties, now conferred by law upon boards of independent districts.

After the formation of any consolidated school district, appeal may be taken as now provided by law in connection with the formation of other school districts. Nothing in this act shall be construed to transfer the liability of existing bonded indebtedness from the district or territory against which it was originally incurred. ('15 c. 238 § 4, amended '17 c. 410 § 1)

[2694—]5. **Same—Consolidation of one or more districts with existing district in certain cases**—In like manner, one or more school districts may be consolidated with an existing district in which is maintained a state high or graded, or semi-graded school in a district containing an incorporated village, in which case the school board of the district maintaining a state high or graded, or semi-graded school in a district containing an incorporated village, shall continue to be the board governing the consolidated school district, until the next annual school election, when successors to the members whose terms then expire shall be elected by the legally qualified voters of the consolidated school district; provided, however, that in case of consolidation with a school district in which there is maintained a state high or graded, or semi-graded school in a district containing an incorporated village, consolidation shall be effected by vote of the rural school districts only, in the manner provided under this act, and by the approval of such consolidation of the rural school district or districts with the one in which there is maintained a state high or graded, or semi-graded school in a district containing an incorporated village, by the school board thereof. Provided that the provisions in this section shall be applicable to a district that has an area not exceeding one (1) mile square in which there is contained a voting school population of one hundred (100) voters or more. ('15 c. 238 § 5, amended '17 c. 410 § 2)

[2694—]6. **Same—Consolidation of unorganized district, etc.**—In like manner any portion of an unorganized school district or district governed by a county board of education may be consolidated with an existing district in which is maintained a state high, graded or semi-graded school, by a vote of the county board of education in the county in which is located such unorganized territory and by the approval of such consolidation of the unorganized territory by the school board of the district in which is maintained a state graded, semi-graded or high school. ('15 c. 238 § 6)

[2694—]7. **Same—Duties of officers of consolidating districts**—The officers of the several districts forming a consolidated school district shall within ten days from receipt of copy of the order of the county superintendent certifying the formation of the new district, or immediately after election and qualification of members of the school board in the consolidated school district, turn over to the proper officers of the newly elected school board, or to the proper officers of the school board in the district maintaining the state high or graded, or semi-graded school, all records, funds, credits, buildings, property and other effects of their several districts. ('15 c. 238 § 7)

[2694—]8. **Same—Powers and duties of board of consolidated district—Duty of superintendent of education**—For the purpose of promoting a better condition in rural schools, and to encourage industrial training, including the elements of agriculture, manual training and home economics, the board in a consolidated school district is authorized to establish schools of two or more departments, provide for the transportation of pupils, or expend a reasonable amount for room and board of pupils whose attendance at school can more economically and conveniently be provided for by such means; locate and acquire sites of not less than two acres, and erect necessary and suitable buildings thereon, including a suitable dwelling for teachers, when money therefor has been voted by the district. They shall submit to the superintendent of education a plat of the school grounds, indicating the site of the proposed buildings, plans and specifications for the school building and its equipment, and the equipment of the premises. ('15 c. 238 § 8)

[2694—]9. **Same—State aid—Classification of districts**—(1) For receiving state aid schools in consolidated districts shall be classified as A and B. Schools of Class A shall be in session at least eight months in the year and be well organized. They shall have suitable school houses with the necessary rooms and equipment. Those belonging in Class A shall have at least four departments and those belonging in Class B, at least two departments. The board in a consolidated school district maintaining a school of either class shall arrange for the attendance of all pupils living two miles or more from the school, through suitable provision for transportation or for the boarding and rooming of such pupils as may be more economically and conveniently provided for by such means.

(2) Besides maintaining schools in consolidated districts conforming to the requirements of those coming under classes A and B, the school board may maintain other schools of not more than two departments, and receive state aid for these as provided for semi-graded and rural schools. ('15 c. 238 § 9)

[2694—]10. **Same—Principal and teachers—Qualifications**—The principal of a consolidated school shall be qualified to teach the elements of agriculture, as determined by such tests as are required by the superintendent of education. A school of this class shall have suitable rooms and equipment for industrial and other work, a library, and necessary apparatus and equipment for efficient work, and a course of study embracing such branches as may be prescribed by the superintendent of education.

(2) The principal and other teachers, including special teachers, shall have such qualifications as may be fixed by the superintendent of education. ('15 c. 238 § 10)

[2694—]11. **Same—State aid, in what amounts**—Schools under Class A in consolidated districts shall receive annually aid of five hundred dollars (\$500); those under Class B shall receive annually aid of two hundred and fifty dollars (\$250).

In addition to such annual aid, schools shall receive annually the amount reasonably expended for the transportation of pupils, not to exceed two thousand dollars (\$2,000).

In addition to other annual aid consolidated schools of either of the above classes shall receive an amount to aid in the construction of buildings, equal to twenty-five (25) per cent of the cost of such buildings, but no school shall receive more than a total of two thousand dollars (\$2,000) for aid in construc-

tion of buildings. The annual aid and the aid for buildings shall be paid in the same manner as now provided by law for the payment of other state aid to public schools.

Whenever any school in a consolidated district attains the rank of a state high or graded school it shall possess the rights and privileges of such school. ('15 c. 238 § 11)

[2694—]12. **Same—Laws repealed**—Sections 1289, 1290, 1291, 1292, 1293 Revised Laws 1905, and chapter 326 Session Laws of 1905 and chapter 304 Session Laws of 1907. Chapter 207 Session Laws of 1911, and chapters 279 and 428 Session Laws 1913 [2686–2694] and other acts and parts of acts inconsistent herewith are hereby repealed. ('15 c. 238 § 12)

See 1915 c. 48.

2696. Division of funds on change of district—

129–300, 152+541.

This section vests in a new district a legal right to a proportionate share of the funds in the treasury of the old district, and the action of the county commissioners in making a division may be reviewed on certiorari (126–209, 148+53). Certiorari, ~~§~~24.

This section applies to all money in the treasury at the time of the organization of the new district, including a building fund raised by the sale of bonds for the construction of a new schoolhouse in the old district. The division of the fund is the act of the legislature, and not that of the officers charged with the duty of making it, and there is no unlawful division of the fund for the purpose for which it was raised. The legislature has the power to direct the distribution, and the courts will not interfere with the exercise of the discretion vested in the county board (126–209, 148+53). Schools and School Districts, ~~§~~41(1).

[2696—]1. **Powers of certain consolidated districts—Eminent domain, etc.**—The school board of any consolidated school district which does not contain within its limits an incorporated city or village may purchase or acquire by condemnation proceedings, as provided by law for acquiring school house sites, in the name and on behalf of such school district, a suitable tract of land within the limits of said district to be used for the purpose of erecting buildings thereon for use for dwelling purposes by teachers or other employees of said district, and may erect such buildings on said tract or on any other real estate owned by such district.

The school board of any such district may also sell, lease or otherwise dispose of such property so built or acquired when deemed advisable and for the best interests of the districts. ('15 c. 358 § 1)

[2696—]2. **Including parts of districts in consolidated district**—Consolidation of school districts of any kind may be effected as provided by existing law except that parts of one or more districts may be included in the vote on consolidation and become a part of a consolidated district as hereinafter provided. ('17 c. 387 § 1)

Section 6 repeals inconsistent acts, etc.

[2696—]3. **Same—Duty of county superintendent—Special plat—Duty of superintendent of education—Approval of plan, etc.—Petition**—Before any steps are taken to include a part of a school district in a proposed consolidated district the superintendent of the county in which the major portion of the territory is situated from which it is proposed to form such consolidation shall, in addition to the general plat provided for, cause a special plat to be made of the portion of any district proposed to be included in said consolidation. This special plat shall show the location of the entire original district with respect to the proposed consolidated district, the valuation and area of the original district, the valuation [and] area of that part of the district to be included in the consolidation together with such other information as may be of essential value. The county superintendent of schools shall submit these plats to the superintendent of education who, after taking into account a proper division of the property and of any floating debt of the original district and considering the educational interests of the community to be affected, shall approve, modify or reject the plan so proposed and shall certify his conclusions to the county superintendent of schools. When a plan for consolidation as above referred to has been approved by the superintendent of education, each part of one or more districts thus included shall, for purposes of consolidation, be regarded as an entire district and

be subject to the laws and procedure for consolidation of entire districts, provided a petition signed and acknowledged by at least one-third of the resident free-holders from each such part of a district is presented to the county superintendent of schools asking for the formation of said consolidation and provided further that said petition for including a part of a district is approved by the board of the school district affected. ('17 c. 387 § 2)

[2696—]4. **Same—Consolidated district to become independent district**—When consolidation is effected by a vote of two or more districts or parts of districts the new district shall thereby become an independent district with the powers, duties and privileges now conferred by law upon independent districts. The county superintendent of schools shall cause a ten days' notice and one week's published notice, if there be a newspaper published in such district, to be given of a meeting to elect officers of the newly formed consolidated district. The new board shall be elected in the same manner as now provided when a common district changes to an independent district. ('17 c. 387 § 3)

[2696—]5. **Same—Existing bonds, etc.**—When a school district not located in an incorporated city or village shall become a part of a consolidated district and is bonded for the erection of a school building, the proceeds from the sale of said building and site, if sold, shall be applied on the payment of said bonds. The voters of a consolidated district may, after its formation by majority vote, take over and assume liability for and payment of the bonded debt of each district or part of a district entering into the consolidation except the bonded debt of any district containing in whole or in part an incorporated city or village. The clerk of the consolidated district shall, in case such bond assumption vote carries, give proper notice thereof to the auditor of each county in which any part of such consolidated district is situated. ('17 c. 387 § 4)

[2696—]6. **Same—Application of laws**—The consolidation of school districts, including parts of districts as referred to in this act is that provided for in Chapter 238, Laws of 1915 [2694—1 to 2694—12]. ('17 c. 387 § 5)

[2696—]7. **Consolidating districts in villages and cities of fourth class**—When an incorporated village or a city of the fourth class contains two or more school districts of any kind situated wholly or in part within the corporate limits of such village or city, when only one of such districts maintains a state high school, such districts may be consolidated and form one district in the manner hereinafter provided. ('17 c. 453 § 1)

[2696—]8. **Same—Petition—Duty of state superintendent of education—Submission to voters**—Whenever a petition signed by at least one hundred legal voters residing within the proposed consolidated district shall be presented to the state superintendent of education requesting that the said districts be united to form one district, and requesting the said state superintendent to call an election within the proposed consolidated district to vote upon the consolidating of such districts, the state superintendent of education shall make proper inquiry as to advisability of such proposed consolidation and if he shall deem it for the best interests of education therein, he shall order an election to determine the question of such proposed consolidation to be held within the proposed consolidated district. Notice of such election shall be given by posted and published notice as required by law for the consolidation of school districts. Such election shall be conducted in the same manner as are annual school elections in independent districts. The vote shall be by ballots which shall read "For Consolidation" or "Against Consolidation." ('17 c. 453 § 2)

[2696—]9. **Same—Certifying return—Duty of state superintendent**—The officers of such election shall certify and make return of the result of the election to the county auditor of each county in which any part of any of said districts lies. If a majority of the legal votes cast at such election shall be in favor of consolidation, such districts shall be consolidated, and

the state superintendent of education shall make an order setting forth such fact and shall file the same with the auditor of each county in which the districts so united are located. ('17 c. 453 § 3)

[2696—]10. **Same—Existing indebtedness**—Nothing in this act shall be construed to transfer the liability of existing indebtedness from the district or territory against which it was originally incurred. ('17 c. 453 § 4)

[2696—]11. **Same—State aid**—A consolidation formed under this act shall not entitle the district to any of the state aid for consolidated schools unless the district and its schools conform in all respects to the provisions for consolidated schools under chapter 238, General Laws of 1915 [2694—1 to 2694—12]. ('17 c. 453 § 5)

[2696—]12. **Payment of bonded and other indebtedness of districts included in consolidated districts**—Whenever any school district has heretofore been included in a consolidated school district, the bonded and floating indebtedness of such old school district existing at the time of the going into effect of such consolidation shall be paid in the manner following:

A. Each year the county auditor shall extend a tax against the territory chargeable with the payment of any outstanding bond for an amount sufficient to pay the interest or instalment of principal due upon such bond in the year following. Such tax when so collected shall be turned over by the county treasurer to the treasurer of the consolidated school district, who shall keep the same in a separate fund and use the money so received for the payment of such interest or instalment of principal. In case, either because all of said taxes so levied are not paid or for any other reason, the amount so raised by such tax levy shall not be sufficient to pay such interest or instalment of principal, then the amount so remaining unpaid for such year shall be included in the levy to be made the following year.

B. The county auditor shall also levy a sufficient tax against the territory which was included in the old school district at the time of the consolidation to pay the outstanding liability of such old district, excepting bonded indebtedness, as such outstanding liability may be represented by school district orders duly issued prior to such consolidation. The money collected from such tax levy shall be by the county treasurer paid over to the treasurer of the consolidated school district, who shall keep the same in a separate fund and therefrom pay such outstanding school district orders with interest thereon. In case the money so collected shall not be sufficient to pay all of such outstanding orders with interest thereon, then the county auditor shall the following year levy a tax sufficient to pay such residuum so unpaid, and so continue from year to year until full payment has been made.

C. In case any such old school district included in a consolidated school district has outstanding obligations not represented by bonds or school district orders, the claims against such old school district may be presented to the board of the consolidated district, and if found correct may be allowed by said board and school district orders issued therefor against the territory included in such old school district to be so designated, and money to pay the same shall be provided by tax levy, and the county auditor, county treasurer and consolidated district treasurer shall take the same procedure and perform the same duties and acts as in paragraph B hereof provided.

D. The school board of a consolidated district in which was included any school district having a bonded indebtedness may refund such bonded indebtedness by a three-fourths vote of the members of such school board and issue refunding bonds therefor which shall be chargeable against the territory that was chargeable with the payment of the bonds so proposed to be refunded. Such refunding bonds shall not run for a period shorter than five years nor longer than twenty years. The first refunding bond shall be due six years from the date of its issuance and shall be for not less than one-tenth of the bond issue in question nor more than one-fifth thereof, and each subsequent bond shall be for a like amount and shall be

payable one year from the due date of the bond to be paid the preceding year. The county auditor shall extend a tax against all the territory chargeable in the first instance with the payment of the old bonds sufficient to pay the interest on such refunding bonds and any instalment of principal that may be due in the following year. Such tax for the first year shall be fifty per cent in excess of the amount to be due the succeeding year, and thereafter each yearly levy shall be in such amount in excess, not exceeding fifty per cent, of the amount to be due the succeeding year, as the auditor may deem necessary. The county treasurer, upon the collection of such tax, shall apply the proceeds thereof to the payment of such interest or instalment of principal, and shall file with the county auditor receipts therefor, together with the cancelled bonds so taken up. The state board of investment may invest the funds under its control in refunding bonds so issued under the provisions of this paragraph.

E. Whenever any person has a claim against a school district which has been included in a consolidated district, which claim is not represented by a bond or school district order and which claim the consolidated district school board will not allow and issue a school district order therefor as provided in paragraph C hereof, such person may institute action in the proper court against the territory included in such old school district at the time of the consolidation by serving a summons and complaint upon the consolidated district school board, which board shall defend such action in behalf of the territory affected. In case judgment is secured by any such person on any such claim, then upon filing a certified copy of such judgment with the county auditor, such county auditor shall proceed by tax levy substantially as provided in paragraph B hereof and the money so received from such tax levy shall be paid by the county treasurer in payment of such judgment. ('17 c. 432 § 1)

[2696—]13. **Same—Care and distribution of moneys by county or district treasurers**—Such moneys so received by the county treasurer and by the treasurer of the consolidated district shall be considered as county and school district moneys so received by them respectively, and such treasurers and their bondsmen shall be liable for the proper care and distribution thereof to the same extent as they are liable for other county and school district funds that may be received by them. ('17 c. 432 § 2)

2704. **Setting off land to adjoining district—Appeal**—When any freeholder shall present to the board of any county a petition, verified by him, stating that he owns land in such county adjoining any district therein, or separated therefrom by not more than one-quarter section, and that such intervening land is vacant and unoccupied, or that its owner is unknown, and that he desires his said land, together with such intervening land, set off to such adjoining district, and his reasons for asking such change, the board, upon notice and hearing as in other cases, and upon proof of all the allegations of the petition, may make its order granting the same, and like notice of such change shall be given as in other cases;

Provided, that any person or officer of any school district aggrieved by any order of the county board made pursuant to the provisions of this section, or by any order of the county board, made on the rehearing before it of any such petition, may appeal to the district court from such order, such appeal to be governed by the provisions of Section 2676, General Statutes, 1913. [Amended '15 c. 113 § 1]

Upon an appeal under this section, as amended by 1915 c. 113, the petition to the board need not be drawn with the formality of a pleading; and, if sufficient to put before the board facts upon which it can base an investigation and determination as to the propriety of the detachment, it is sufficient. A petition was sufficient to justify the board in hearing it, and making the order of detachment, though the complaint in the petition was, in substance, that the taxes were exorbitant and confiscatory (131-79, 154+669). Schools and School Districts, §37(3).

Upon an appeal under this section, as amended by 1915 c. 113, the act of the county board being legislative, the court will limit its inquiry to the question whether the act of the board was arbitrary, or fraudulent, or oppressive, and such as to work manifest injustice, and will not review the legislative judgment and discretion committed to the board (131-79, 154+669). Schools and School Districts, §39.

2711. Special school meetings—

Infant child of naturalized father was qualified to sign a request for a special meeting (121-376, 141+801). Citizens, ~~69~~9, 10.

Schoolhouse site may be changed at special meeting called under this section. Admission that the moderator "duly declared said proposition carried" held to show that measure was legally carried at meeting (121-376, 141+801). Schools and School Districts, ~~69~~69.

[2714—]1. **Proceedings of boards of independent districts to be published**—The school board of each independent school district in this state shall cause to be published once, in some newspaper published in the city or village constituting or in which such school district is located, or if there be no newspaper so published therein, then in a newspaper published at the county seat of the county in which such school district is located, the official proceedings of such board, and such publication shall be made as soon as may be, and not later than thirty days after the meeting at which such proceedings were had. Such publication shall be let annually by contract to the lowest bidder, at the first regular meeting of said board after the annual election in such district, provided that not more than fifty cents per folio shall be paid for such publication. ('15 c. 360 § 1)

2715. Powers of annual meeting—

Schoolhouse site may be changed at special meeting called under § 2711 (121-376, 141+801). Schools and School Districts, ~~69~~69.

[2715—]1. **Candidates for offices—Application—Duty of clerk of district court**—Any person desiring to be a candidate for a school district office at the annual meeting of such district shall file with the clerk of such district an application to be placed on the ballot for such office or any five (5) voters of such district may file such application for and on behalf of any qualified voter in the district that they desire shall be such candidate. Such applications shall be filed not more than thirty (30) nor less than twelve (12) days before the annual school district meeting. The clerk of the district in his notice of the annual meeting shall state the names of the candidates for whom applications have been filed, failure to so do, however, shall not affect the validity of the election thereafter held. The clerk shall prepare at the expense of the district, necessary ballots for the election of officers, placing thereon the names of the proposed candidates for such office and with a blank space after such names and such ballots shall be substantially prepared as are ballots for general election but without the necessity of having the ballots marked or signed as official ballots. ('17 c. 384 § 1)

Section 3 repeals inconsistent acts, etc.

[2715—]2. **Same—Districts employing only one teacher**—Provided, however, that nothing in this act shall apply to, or affect school districts employing but one teacher. ('17 c. 384 § 2)

[2738—]1. **Boards of education in cities of first class not under home rule charters**—The board of education in every city in the State of Minnesota now or hereafter having over fifty thousand inhabitants and not governed under a charter adopted pursuant to section 36, article 4 of the State Constitution, shall consist of nine school directors from the first Monday in January, A. D. 1919, to the first Monday in January, A. D. 1921, and shall consist of ten school directors from the first Monday in January, A. D. 1921, to the first Monday in January, A. D. 1923, and from and after the first Monday in January, A. D. 1923, said board of education shall consist of nine school directors, which school directors shall be one school director at large from the city and one school director from each senatorial district within such city and shall be elected as herein provided. The present members composing such board of education shall continue in office until the expiration of their terms of office, respectively. ('17 c. 446 § 1)

[2738—]2. **Same—Elections**—At the general election in such city in the year 1918 and at the general election in such city occurring every six years thereafter each odd numbered senatorial district and each fractional odd numbered senatorial district within such city shall elect one such school director for the term of six years, and at the election in such city for the year

1920 and at the general election in such city occurring every six years thereafter each even numbered senatorial district and each fractional even numbered senatorial district within such city shall elect one such school director for the term of six years, and at the general election in such city for the year 1922 and at the general election in such city occurring every six years thereafter one such school director at large shall be elected by all the senatorial districts and fractional senatorial districts included in such city for the term of six years. ('17 c. 446 § 2)

[2738—]3. Same—Vacancies—Whenever any vacancy shall occur in the office of any such school director three years or more before the expiration of his term of office, such vacancy shall be filled by the election at the next general election held in such city of a school director for the unexpired term by the electors of the senatorial district or districts in respect to which such vacancy shall occur. Any such vacancy for the period prior to such election of a school director and his qualification for such office, and any vacancy occurring in the office of any school director less than three years before the expiration of his term, may be filled by appointment by the board of education of a school director from the senatorial district or districts in respect to which such vacancy shall occur. ('17 c. 446 § 3)

[2740—]1. Elections in independent districts having four or more villages—Precincts—Duty of school board—In all independent school districts in this state, having within their boundaries four or more organized villages, the school board shall at least thirty days before the next annual school meeting to be held in such districts after the passage of this act, by resolution in writing, divide the district into precincts for the purpose of electing members of the school board, voting on the issue of bonds, and on all other matters specifically submitted for vote by ballot; and may thereafter change the boundaries of such precincts, consolidate two or more, or establish new ones, as the convenience of the voters shall require. Such resolutions shall describe the precincts, giving the boundaries thereof, fix a polling place at some school building in each precinct most convenient and accessible to the majority of voters therein, and shall be filed in the office of the district school clerk, and a copy thereof forthwith filed in the office of the county auditor of the county wherein the district is located. ('15 c. 111 § 1)

Section 7 repeals inconsistent acts, etc.

[2740—]2. Same—Time for holding regular elections, notice, etc.—The regular elections held in said precincts shall be on the Saturday next preceding the annual school meeting of such district. The polls shall be opened and closed at the hours fixed by the previous annual meeting, except that at the first election held after the passage of this act the hours of opening and closing the polls shall be fixed by the school board. Notice of such elections shall be given in each precinct in the same way and for the same length of time as provided by law for annual school meetings, stating the time and place, and the matters to be voted on; and no proposition, except the election of officers, shall be voted on by ballot unless specified in the notice. ('15 c. 111 § 2)

[2740—]3. Same—Moderator and clerk—Duty of clerk—Ballots—Poll lists—Certifying results—At least twenty days before the next annual school meeting of such district, said school board shall, by resolution filed with the clerk of the board, appoint from the resident electors a moderator or judge of election and two clerks from each precinct. The clerk of said school board shall immediately notify in writing each person so appointed, of his appointment, and such person if present at the hour set for opening the polls, shall qualify, open the polls and conduct such elections the same as elections are conducted at annual school meetings. If any of such appointed officers are absent or fail to act at the hour set for opening the polls, the electors present may choose any elector then present to fill the vacancy, who shall qualify and act. Each voter shall after marking his ballot, fold the same so as not to disclose any markings thereon, hand the same to the moderator, who shall deposit it in the ballot box. The election officers shall keep a poll list in which they shall write the name of each elector

voting, numbering the same in consecutive order. At the time fixed the polls shall be closed, and the officers of election in each precinct shall forthwith count the votes and certify the results of the vote to the clerk of the district, place the certificate, poll list, ballots and all other records of such election, in an envelope, securely seal, and mail or deliver the same forthwith to the clerk of the district. ('15 c. 111 § 3)

[2740—]4. **Same—Canvass of votes, etc.**—The school board shall canvass said votes and declare the results thereof at the next annual school meeting. The result shall then stand, and the board shall take such action in regard to said election and all matters voted upon thereat, as if the election had been held at such annual meeting. ('15 c. 111 § 4)

[2740—]5. **Same—Special elections**—Special elections may be called and held in such districts the same as heretofore provided by law, except that in all matters to be voted upon by ballot, such elections shall be held in such precincts instead of at a school meeting. Notice of such special elections shall be given in the same way and for the same time as is now provided by law for special elections in independent school districts. The election officers appointed for the regular election shall preside at such subsequent special elections, and vacancies by reason of absence or failure of any such officer to act, may be filled in like manner as at regular elections. Such special elections shall be conducted and the records thereof certified to the school board the same as for regular elections. The school board shall canvass the vote and declare the result thereof within three days after the receipt of such returns from all the various precincts. ('15 c. 111 § 5)

[2740—]6. **Same—General laws to apply**—Except as herein specifically provided, the general laws relating to the holding of school meetings, special school meetings, and special elections in independent school districts, shall be applied, construed and used by said school boards and by said officers of elections in carrying out the provisions of this act. ('15 c. 111 § 6)

2745. Quorum—

Under this section notice given by applicant for employment as teacher to member of school board of a meeting a few minutes before the meeting called by the secretary was insufficient. The notice to a school board of a board meeting must be a personal notice and given or authorized by proper authority, and sufficient to give member reasonable opportunity to attend meeting (162+1081). Schools and School Districts, ¶57.

2746. **Powers and duties of school board**—1. When authorized by the voters at a regular meeting or a special meeting called for that purpose, may acquire necessary sites for schoolhouses, or enlargements or additions to existing schoolhouse sites, by lease, purchase or condemnation under the right of eminent domain; erect, lease or purchase necessary school houses or additions thereto; and sell or exchange such school houses or sites and execute deeds of conveyance thereof. In any village or city such site, when practicable, shall contain at least one block, and, if outside of any city or village, two acres; and when any schoolhouse site shall contain less than such amount, the board shall, if practicable, acquire other land adjacent to or near such site to make, with such site, such amount. (Amended '15 c. 25 § 1 subd. 1)

Necessity of condemnation not subject to judicial review (121-376, 141+801). Eminent Domain, ¶68.

District may condemn site without first making attempt to purchase (121-376, 141+801). Eminent Domain, ¶170.

Schoolhouse site may be changed at special meeting called under § 2711 (121-376, 141+801). Schools and School Districts, ¶69.

Purchase by directors of district held ratified by action of voters at next annual meeting (122-59, 141+1105). Schools and School Districts, ¶82.

G. S. 1894 § 3653 subd. 1, cited—124-271, 144+960.

2747. **Further powers and duties of school board**—* * * (3) Authorize the use of any school house in the district for divine worship, Sunday schools, public meetings, elections and such other similar purposes as, in their judgment, will not interfere with its use for school purposes; but before permitting such use, the board may require the bond of some responsible party, in the penal sum of one hundred dollars, conditioned for the proper use of such school house, the payment of all rent, and the repair of all damage occa-

sioned by such use, and they may charge and collect for the use of the district from the persons using such school house such reasonable compensation as they may fix. (Par. 3 amended '17 c. 417 § 1)

[2747—]1. Further powers and duties of school board quasi school activities, etc.—School auxiliary fund—In addition to the powers now or hereafter conferred by law upon the school board of any school district in this state, such school board may and upon vote of the district shall take charge of and control all school and quasi school activities of the teachers and children of the public schools in that district held in the school buildings or school grounds or under the supervision or direction of the school board and to that end adopt rules and regulations for the conduct of athletic, oratorical, musical, dramatic and other contests and entertainments in which the schools of such district or any class or pupils therein may participate. All moneys received on account of such entertainments and contests shall be turned over to the school district treasurer who shall keep the same in a separate fund to be known as the "school auxiliary fund," to be disbursed for expenses connected with such entertainments or contests, or otherwise by the school board upon properly allowed itemized claims. Any donations to the school district for specific objects and purposes and other than for the primary purposes of the district, shall be placed in the fund hereinbefore referred to and in like manner disbursed; the request of the donor or donors thereof being complied with in regard to the purpose of such disbursements, if the school board shall consider that the interest of the district will be promoted thereby. ('17 c. 112 § 1)

[2747—]2. Same—Consent for entertainments—No such school or quasi school entertainment or contest in any district in which the school board shall act under the provisions of this chapter shall be participated in by the teachers or pupils in the public schools of such district, nor shall the school name or any allied name be used in connection therewith, except by consent and direction of the school board. ('17 c. 112 § 2)

2748. To acquire sites for agricultural schools—

State lands are not subject to appropriation, unless expressly or by necessary implication authorized by statute. Under this section a school district may acquire an interest in state school lands for experimentation and instruction in agriculture (124-271, 144+960). Eminent Domain, ¶46.

2754. Same—Not applicable to cities under home rule charters—

128-82, 150+389.

[2755—]1. Additional powers of boards in independent districts in cities of first class under home rule charters—The school board of any independent school district, in any city of the first class, operating under article 4 of section 36 of the State Constitution of Minnesota, is hereby authorized to establish and supervise for children and adult persons, in school buildings and on the school grounds under the custody and management of any such school board, or in such buildings or upon such grounds as may be placed under the custody and management of any such school board, vacation schools, reading rooms, library stations, debating clubs, gymnasias, play grounds and similar activities, including social centers. ('17 c. 166 § 1)

[2755—]2. Same—Tax levy—The school board of any such independent school district is hereby authorized to levy a tax upon all the taxable property within such independent school district, not exceeding three tenths (.3) of a mill for the establishment and maintenance of such vacation schools, reading rooms, library stations, debating clubs, gymnasias, play grounds and similar activities or any of the same, including social centers. ('17 c. 166 § 2)

2756. Special duties of boards in common school districts—

School districts, pupils from which attend special schools maintained in other districts for training in agriculture and domestic science under §§ 2820, 2823, may levy a tax to pay the tuition of such pupils (122-254, 142+325, 47 L. R. A. [N. S.] 200). Schools and School Districts, ¶100.

[2757—]1. Evening schools in common or consolidated districts or for unorganized territory—The school board of any common or consolidated school district or the school board of for unorganized territory may establish

and maintain public evening schools as a branch of the public schools, and such evening schools when so maintained shall be available to all persons over sixteen years of age who, from any cause, are unable to attend the public school of such district; and the branches taught at such evening schools and the general conduct thereof shall be subject to the direction and control of the state superintendent of education. ('17 c. 356 § 1)

[2757—]2. Same—Duties of state superintendent—The state superintendent of education is hereby authorized and directed to make such investigations as may be necessary to advance the purposes of this act and to carry out the provisions thereof, and to that end he may appoint such additional assistants as may be necessary. ('17 c. 356 § 2)

[2757—]3. Same—Salaries—One-half the salary of all teachers who teach in evening schools in common, independent, or consolidated school districts shall be paid by the state, as appropriations are made by the legislature for that purpose which payment shall be made upon verified statements of account presented by the respective school districts and approved by the local superintendent of schools in all districts maintaining a state high school, or by the county superintendent of schools in the case of districts which do not maintain such state high schools. ('17 c. 356 § 3)

2759. Duties of clerk—

It is the duty of a clerk of a school district to draw orders upon the treasurer for the payment of teachers' wages as they become due, without requiring that a bill therefor be first presented and allowed by the school board (126-367, 148+306). Schools and School Districts, ~~6~~144(5).

2760. Duties of treasurer—

As to issue of duplicate, where order or warrant is lost or destroyed, see §§ [1846—]4 to [1846—]7.

[2774—]1. Payment of bills in cities of first class not under home rule charters—Power of board of education—The board of education in every city of this state having over fifty thousand inhabitants and not governed under a charter adopted pursuant to Section 36, Article 4, of the state constitution, notwithstanding any provision of law to the contrary, may hereafter provide by resolution for the payment of all current bills incurred by the board for goods, wares and merchandise purchased for school purposes, the purchase whereof has been duly authorized by the board, without awaiting a formal vote of the board directing the payment thereof. ('15 c. 149 § 1)

[2774—]2. Same—Re-payment in case of error—Should any bills so paid prove to be erroneous or excessive upon examination made within ninety (90) days after payment, the payee thereof shall repay to the board of education on demand of the board or of the city attorney all such excess, or be subject to an action at law for double the amount thereof. ('15 c. 149 § 2)

[2774—]3. Same—Protection against fraud, etc.—Such resolution may contain such further provisions as the board of education shall deem necessary to protect the board against fraud, irregularity and mistake in the matter of such purchases. ('15 c. 149 § 3)

[2774—]4. Certain orders issued by certain independent school districts legalized—All outstanding orders heretofore issued within one year prior to the passage of this act by any independent school district, being wholly within any county of this state not exceeding in area 800 square miles, for the purpose of paying and defraying the expenses incurred in connection with the erection and construction of a high school building, and all expenses incurred, and all orders issued within said time, in connection with the installing and placing therein of heating, ventilating, and plumbing plants, and equipping, and furnishing such building with apparatus and school furniture, and in constructing and furnishing necessary sewerage in connection with said building, are hereby legalized and validated and made the legal and valid indebtedness of the school district so incurring such indebtedness or issuing such orders. ('15 c. 130 § 1)

[2774—]5. **Same—Pending actions**—This act shall not affect any action or proceeding now pending in any court of this state involving the legality of any such order, warrant or item of expense. ('15 c. 130 § 2)

[2774—]6. **Certain orders issued by certain common districts legalized**—All outstanding orders heretofore issued within one year prior to the passage of this act by any common school district supporting a graded school and a full 4 years' high school course and being wholly within any county of this state issued for the purpose of paying the expense incurred in connection with the erection, construction and equipment of a school building therein, which cost at least \$21,000, are hereby legalized and validated.

Provided that the amount of such orders do not exceed the sum of thirty-five hundred dollars, and provided further that when added to the total indebtedness of said district, bonded or otherwise, such indebtedness shall not exceed the limit for which such school district is authorized by law to issue its bonds. ('15 c. 269 § 1)

[2774—]7. **Same—Pending action**—This act shall not affect any action or proceeding now pending in any court of this state involving the legality of any such order. ('15 c. 269 § 2)

CONDUCT OF SCHOOLS

2795. General control of schools—

Cited (162+688).

2796. Length of school—

Cited (122-254, 142+325, 47 L. R. A. [N. S.] 200).

2800. Graded schools—

Cited (162+688).

[2807—]1. **Patriotic exercises**—That in all of the common, graded and high schools of this state it shall be the duty of the superintendent or teachers in charge of such schools to teach and require the teaching therein, on at least one day out of each week, of subjects and exercises tending and calculated to encourage and inculcate a spirit of patriotism in the pupils and students. Such exercises shall consist of the singing of patriotic songs readings from American history and from the biographies of American statesmen and patriots and such other patriotic exercises as the superintendent or teachers of such schools may determine.

The time to be spent thereon on each of said days shall not exceed one-half hour. ('17 c. 108 § 1)

[2807—]2. **Display of United States flag**—There shall be displayed at every public school in Minnesota, when in session, an appropriate United States flag. Such display shall be upon the school grounds or outside the school building, upon a proper staff, on every legal holiday, occurring while the school is in session and at such other times as the respective boards of such school districts may direct and within the principal room of such school building at all other times while the same is in session. ('17 c. 313 § 1)

[2807—]3. **Same—Duty of board**—It shall be the duty of every school board and board of education to provide such flag for each of the school buildings of their respective districts, together with a suitable staff for the display thereof outside of such school building and proper arrangement for the display thereof within such building and a suitable receptacle for the safe-keeping of such flag when not in use, as by this act directed, at all times. ('17 c. 313 § 2)

DEPARTMENTS OF AGRICULTURE, MANUAL TRAINING AND DOMESTIC ECONOMY IN HIGH, GRADED AND CONSOLIDATED RURAL SCHOOLS

2818-2828. [Repealed.]

See § [2828—]17.

2820—130-19, 153+113.

This section is not violative of Const. art. 8 §§ 1, 3 art. 9, § 1, and art. 1 §§ 7, 13 (122-254, 142+325, 47 L. R. A. [N. S.] 200). Constitutional Law, ¶278(1).

The fund to pay the tuition of pupils attending such special school may be raised by taxation (122-254, 142+325, 47 L. R. A. [N. S.] 200). Schools and School Districts, ¶100.

An action may be maintained to recover such tuition (122-254, 142+325, 47 L. R. A. [N. S.] 200). Schools and School Districts, ¶159.

2823—This section, in imposing taxes on districts sending pupils to other districts establishing special schools, is not violative of Const. art. 1 §§ 7, 13, art. 8 §§ 1, 3, or art. 9, § 1 (122-254, 142+325, 47 L. R. A. [N. S.] 200). Constitutional Law, ¶278(1).

[2828—]1. "Industrial subjects" and "central school" defined—"Industrial Subjects" as that term is used in this act, shall include courses in agriculture, home training (including cooking and sewing), manual training, and commercial training.

The term "central school" as used in this act, shall mean the school or schools of a district in which industrial courses are given. ('15 c. 239 § 1)

By § 18, this act takes effect August 1, 1915.

[2828—]2. Schools designated to maintain industrial courses—Any high school, graded school, or consolidated rural school which has satisfactorily met the requirements in regard to rooms and equipment, and has shown itself fitted by location and otherwise to give training in any one or more of the industrial subjects, may be designated by the state board of education to maintain such industrial courses, and to receive state aid therefor.

Any school now operating and receiving state aid under the provisions of Chapter 247, General Laws of 1909, and the acts amendatory thereof [2818-2828], shall continue to be aided under the provisions of this act for its industrial departments, provided such school maintains the standards made for receiving aid on such account.

Any such school which has secured a tract of land for experimental and demonstration purposes may continue to own and operate such tract in connection with the industrial school courses. ('15 c. 239 § 2)

[2828—]3. Qualifications of instructors—Each such school shall employ trained instructors for the several courses, having such qualifications as may be fixed by the state board of education. ('15 c. 239 § 3)

[2828—]4. School garden and experimental tract—A school maintaining a course in agriculture may procure a tract of land suitable for school garden and for purposes of demonstration, located within the school district, or if outside of the school district not to exceed three miles from the central building.

The board may require a school having a course in agriculture to procure a tract of land for the purposes stated. ('15 c. 239 § 4)

[2828—]5. Instruction to be practical—Short course—The instruction in agriculture, as well as in the other industrial courses, shall be of a practical character and shall include such questions and the study of such subjects or courses as have a direct relation to the business of farming, home making, and the other subjects included under the head of industrial studies.

When necessary to accommodate a reasonable number of boys and girls to attend only in the winter months, special classes shall be formed for them. ('15 c. 239 § 5)

[2828—]6. Association of districts—For the purpose of providing training and instruction in agriculture and such other industrial subjects as can properly be taught to pupils in rural schools, and to extend the influence and supervision of the central school to rural schools, one or more school dis-

tricts may become associated with a high, graded, or consolidated rural school in which industrial courses are maintained.

Such association may be effected with a central school even though such central school has not been designated to receive annual state aid on account of maintaining industrial courses. ('15 c. 239 § 6)

[2828—]7. **Association, how effected**—Association shall be effected, upon action taken at any annual or special meeting of the rural school district seeking such association, under such rules as the state board of education may establish.

The association shall be considered as effected only after the approval by the school board of the central district and by the state board of education. ('15 c. 239 § 7)

[2828—]8. **Duties of Superintendent or Principal of Central School**—The superintendent or principal of the central school shall exercise the same authority and supervision over the associated rural schools as over the central school. He shall prepare for the associated rural schools suitable courses of study in agriculture and in such other industrial courses as may properly be taught in the associated rural schools. ('15 c. 239 § 8)

[2828—]9. **Admitting pupils to central school**—Any pupil from an associated rural school shall be admitted to any grade or department in the central school upon the same conditions as pupils resident in the district of the central school. ('15 c. 239 § 9)

[2828—]10. **Termination of association**—The relationship between any associated school district and the central school shall be permanent except as it may be terminated, at the end of any school year, by a two-thirds vote of the school board of the central district or by a majority vote of the voters of the associated district, if such vote be taken at a special election called and held for that purpose prior to March 15th next preceding the close of the current school year and written notice of the action of each district be given to the other within ten days. ('15 c. 239 § 10, amended '17 c. 354 § 1)

[2828—]11. **Associated school board**—The members of the various school boards of the associated rural districts and the members of the school board of the central district shall constitute a board to be known as "The Associated School Board of _____ of _____." ('15 c. 239 § 11)

[2828—]12. **Duties of associated school board**—The duties of the associated board shall be:

(a) To hold such meetings at the central school at such times as the associated board may determine.

(b) To act on questions affecting the relation of the associated rural schools and the central school.

(c) To submit to a vote of the various associated rural districts the questions of levying a tax in the associated rural districts to assist in the erection of an agricultural and industrial building in connection with the central school, and the levy and collection of a tax for this purpose.

The associated school board may also submit to the several associated rural districts the question of levying a tax in such district to assist the central districts in the maintenance of the industrial courses, such tax in no case to exceed two (2) mills in any year.

Before any tax, either for building or for maintenance, shall be levied, it must be voted for and approved by each of the rural districts so associating with a central school.

(d) To procure for demonstration and experimental work in agriculture, when necessary, a tract of land in one or more of the associated rural districts. ('15 c. 239 § 12)

[2828—]13. **Officers of associated school board**—The officers of the district of the central school shall be the officers of the associated school board. ('15 c. 239 § 13)

[2828—]14. **State aid to industrial departments**—High, graded, and consolidated rural schools maintaining courses in agriculture, home training (including cooking and sewing), manual training, and commercial training, shall receive one thousand dollars (\$1,000) for the agricultural course, and six hundred dollars (\$600) for each course in home training (including cooking and sewing), manual training and commercial training.

Aid to each of these departments shall not exceed the sums paid as salaries in the respective departments. ('15 c. 239 § 14)

See § [2948—]7.

[2828—]15. **State aid to schools on account of association**—Rural school districts associated with a central school shall receive annually fifty dollars (\$50) on account of such association.

The central school with which a rural school or rural school district is associated for the purposes herein stated shall maintain departments in agriculture and such other industrial subjects as the state board of education may require, and shall receive annually two hundred dollars (\$200) for each such associated rural school or school district. ('15 c. 239 § 15)

[2828—]16. **Authority, where vested**—In case the state board of education referred to in this act shall not be provided by law, the authority herein granted to such board shall vest in the state high school board and the state superintendent of education in accordance with the provisions of existing law. ('15 c. 239 § 16)

[2828—]17. **Laws repealed**—Chapter 247, General Laws 1909, Chapter 82, General Laws 1911, Chapter 309, General Laws of 1913, and Chapter 91, General Laws 1911 [2818-2828], as amended by chapter 96, General Laws 1913 [2939, 2940] are hereby repealed. ('15 c. 239 § 17)

[SCHOOLS FOR DEAF, BLIND, DEFECTIVE SPEECH AND MENTALLY SUBNORMAL CHILDREN]

[2828—]18. **Schools for deaf children in special, independent and common districts—Application to state superintendent—Annual report—Conduct of schools—State aid, etc.**—Upon application of any special, independent or common school district, complying with the provisions of this act, made to the state superintendent of education, he may grant permission to such district to establish and maintain within its limits one or more schools for the instruction of deaf children who are residents of the state.

Any school district which shall maintain one or more such schools, shall through its clerk or secretary report to the state superintendent of education annually, or oftener if he so direct, such facts relative to such school or schools as he may require.

The courses and methods of instruction must comply with such requirements as may be outlined by the state superintendent of education. All schools for deaf children established under this act shall be conducted by the combined system which includes the oral, the aural, the manual and every method known to this profession; and the courses and methods of instruction shall be substantially equal or equivalent in efficiency to the course and methods of instruction established and employed in the State School of the Deaf at Faribault, Minnesota. The state superintendent of education may designate any member of his staff as an inspector to visit and note the progress of the schools provided for in this act.

Permission to establish such special classes may be granted to districts which have an actual attendance of not less than five deaf children, between the ages of four and ten years who may come under the provisions of this act. Blind children, defective speech children and mentally subnormal children are not to be admitted to the same class with deaf children but must each have separate classes and separate teachers.

There shall be paid out of the current school fund in the state treasury an-

nually in the month of July, to the treasurer of the school district board, or of the board of education, in the school district maintaining such school or schools under the charge of one or more teachers, whose appointment and qualifications shall be approved by the state superintendent of education, the sum of one hundred (\$100.00) dollars for each deaf child instructed in such school or schools having an annual session of at least nine months during the year preceding the first day of July.

It shall be the duty of the treasurer of the school district or of the board of education receiving the aid provided for in this section, to render annually to the state superintendent of education an itemized statement of all expenditures of said school or schools. Any surplus at the end of the year shall be reserved as a special fund for the education of the deaf children of that district and can be used for no other purpose. ('15 c. 194 § 1)

[2828—]19. **Schools for blind children—State aid**—Section one (1) of this act [2828—18] shall, so far as applicable, provide for and apply to schools for the blind, except that there shall be paid out of the current school fund in the state treasury annually in the month of July to the treasurer of the school district maintaining a school or schools for the blind under the charge of one or more teachers whose appointment and qualifications shall be approved by the state superintendent of education, the sum of one hundred (\$100.00) dollars for each blind pupil instructed in such school or schools having an annual session of at least nine months during the year next preceding the first day of July. ('15 c. 194 § 2)

[2828—]20. **Schools for defective speech children—State aid**—Section one (1) of this act [2828—18] shall, so far as applicable, provide for and apply to schools for defective speech children, except that these schools shall be under the control of the state superintendent of education and that there shall be paid out of the current school fund in the state treasury annually in the month of July to the treasurer of the school district maintaining a school or schools for defective speech children under the charge of one or more teachers whose appointment and qualifications shall be approved by the state superintendent of education, the sum of one hundred (\$100.00) dollars for each defective speech child instructed in such school or schools having an annual session of at least nine months during the year next preceding the first day of July; and a share of such sum proportionate to the term of instruction of any such pupil who shall be so instructed less than nine months during such school year. ('15 c. 194 § 3)

[2828—]21. **Schools for mental subnormal children—State aid**—Section one (1) of this act [2828—18] shall, so far as applicable, provide for and apply to schools for mental subnormal children, except that these schools shall be under the control of the state superintendent of education and that there shall be paid out of the current school fund in the state treasury annually in the month of July to the treasurer of the school district maintaining a school or schools for mental subnormal children under the charge of one or more teachers whose appointment and qualifications shall be approved by the state superintendent of education, the sum of one hundred (\$100.00) dollars for each mental subnormal child instructed in such school or schools having an annual session of at least nine months during the year next preceding the first day of July. ('15 c. 194 § 4)

[2828—]22. **Limitation of attendance**—Permission to establish such special classes as may come under the provisions of Sections 2, 3 and 4 of this act [2828—19 to 2828—21], may be granted to districts which have an actual attendance of not less than five children, between the ages of four and sixteen years. ('15 c. 194 § 5)

TEACHERS—EXAMINATIONS AND CERTIFICATES**2856. Same—Causes for revocation or suspension—**

Liability of school officers for malicious discharge of teacher (130-440, 153+862). Schools and School Districts, §142.

[TEACHERS' INSURANCE AND RETIREMENT FUND]

[2864—]1. "Teacher" and "member of the fund association" defined—The word teacher as used in this act shall include any teacher, supervisor, principal, superintendent, or certified librarian employed in any educational or administrative capacity in the public schools of Minnesota, or in any educational, correctional, or charitable institution supported wholly or in part by this state, excepting those employed in the University of Minnesota. The term "member of the Fund Association," wherever used in this act, shall mean and include every teacher, (as herein defined), who shall contribute to the Teachers' Insurance and Retirement Fund by the payment of the dues hereinafter provided by this act. ('15 c. 199 § 1)

[2864—]2. Teachers' insurance and retirement fund—How derived—Assessments, etc.—For the purpose of better compensating the teachers in the public schools and making the occupation of "teacher" in this state more attractive to qualified persons, there is hereby established for the state a fund to be known as the "Teachers' Insurance and Retirement Fund," for the benefit of teachers who have served not less than twenty (20) years except as hereinafter provided. Said fund shall be secured from the following sources:

1st. From assessments on the members of the fund association according to the following schedule:

For the first 5 years of teaching service, \$5.00 per year;

For the second 5 years, \$10.00 per year;

For the next 10 years, \$20.00 per year;

For the next 5 years, \$30.00 per year;

provided that when the regular annual salary as teacher of any member of the fund association shall have reached \$1,500 or more said member shall be assessed upon a percentage basis as follows: One and one-half (1 1-2) per centum per annum, but not more than twenty (20) dollars per year for the first ten years of service as a teacher; and two (2) per centum per annum, but not more than forty (40) dollars per year, for each successive year of service as teacher; provided that in no case shall the annual assessments based on a percentage rate be less for any year than the flat rate assessments for a single year of the corresponding period, said assessment period to cover not more than twenty-five (25) years in all, after which all assessments shall cease.

2nd. From all money and property received as donations, gifts, legacies, devises, bequests or otherwise, for the benefit of said Teachers' Insurance and Retirement Fund.

3d. From all interest arising from investments of the money belonging to said fund.

4th. From a tax of one-twentieth (1-20) of one mill which is hereby levied annually on all the taxable property located in that part of the state subject to the provisions of this act, after the valuation of said property has been equalized by the state; said tax to be collected by the same officials and at the same time and in the same manner as other taxes in said state, all moneys received from the tax hereby levied to be paid into and become a part of the said Teachers' Insurance and Retirement Fund.

The assessments upon the members of the fund association hereinbefore referred to shall be paid in as many equal monthly payments as there are

months in the school year for which the teachers' salaries are paid, and such assessments shall be deducted by the several boards of education or managing bodies from the salaries of teachers as hereinafter provided.

Credit on period of service may be allowed to applicants for membership for periods of employment prior to the taking effect of this law; but in such case the applicant must pay arrearages at the above rates for the period of service for which credit is so allowed under rules to be adopted by the board of trustees, hereinafter referred to, and the rules adopted by said board shall be uniform in their operation as to all persons affected. In case any teacher has retired for any cause before he or she has paid in fees a sum equal to the full amount of fees required for the annuity applied for and to which such teacher is entitled by period of service, there shall be deducted from the first year's annuity to such teacher such sum as will make the total amount paid by said teacher equal to the full amount of said fees. ('15 c. 199 § 2)

[2864—]3. Duties of boards of education—Deductions from salaries—Statements and moneys to be forwarded to county treasurer—Statements to county superintendent—Penalties—Duties of Superintendents—Report—Duties of county and state treasurers—It is hereby made the duty of each board of education or managing body required by law to draw the warrants or orders for payment of salaries of teachers to deduct and withhold from each month's salary due to such teacher the amount which such teacher is required to pay into said insurance and retirement fund as herein specified, and at the time of such deduction a statement showing the amount of such deductions shall be furnished to such teacher.

Such board of education or other managing body shall, between the first and fifteenth of January and between the first and fifteenth of July of each year, forward to the treasurer of the county in which such school district is situated a statement, verified by the secretary or clerk thereof, showing the amount of money so retained from each teacher in accordance with the provisions of this act, and with said statement shall transmit the entire amount so retained to the treasurer of said county; and in case any school district is situated in more than one county such report and remittance shall be sent to the senior county. Said board of education or other managing body shall also, on or before the fifteenth day of July of each year, transmit to the county superintendent a statement showing the name of each teacher, the number of months of school taught during the year for which the statement is made, the number of months which constitute a school year in said district or institution, and the total amount withheld from the salary of each teacher for the school year preceding, showing also the number of years each of said teachers has taught in the public schools of that district. If no teacher in such public school or other educational institution comes under the provisions of this act, said report shall state such fact and shall be verified by the oath of the clerk or secretary. The failure of any member of a school board, board of education or other body having the management of any educational institution to perform any of the duties herein required of them shall be a misdemeanor.

Each county superintendent shall each year, on or before the first day of September, report under oath to the board of trustees of the State Teachers' Insurance and Retirement Fund, giving an itemized summary of the statements received by him from the school boards and other educational managing bodies, showing the total amount withheld from the salaries of teachers in said county for the benefit of said insurance and retirement fund. Between the fifteenth and thirtieth day of January and between the fifteenth and thirtieth day of July of each year, the county treasurer of each county shall transmit to the state treasurer all moneys received from the boards of education or other managing bodies of school districts or other educational institutions, in accordance with the provisions of this act, and shall certify under oath to the correctness of the amount so received and transmitted. The state treasurer

shall credit all moneys received under the provisions of this act to the State Teachers' Insurance and Retirement Fund.

Provided, however, that the state treasurer, the several county treasurers and the treasurers of the various school districts shall be officially liable for the receipt, handling and disbursement of all moneys coming into their hands belonging to the said State Teachers' Insurance and Retirement Fund, and the securities on the official bonds of each of said treasurers shall be liable for such money the same as for all other moneys belonging to the school funds of this state. ('15 c. 199 § 3)

[2864—]4. Board of trustees of fund, how constituted—Terms—Vacancies—Powers and duties—Applications for annuities or benefits—Investments—Office—The management of the fund shall be vested in a board of five (5) trustees, which shall be known as the "Board of Trustees of the Teachers' Insurance and Retirement Fund." Said board shall be composed of the following persons: The state superintendent of education, the state auditor, the attorney general and two (2) members of the fund association, who shall be elected by the members of the fund association at the time and place of the annual meeting of the Minnesota Educational Association and shall serve for the term of two years, beginning on the first Monday of January next succeeding their election, except in the case of the first elective members, who shall assume office immediately after their election and serve one for one year and one for two years from the first Monday of January next succeeding their election and until their successors are elected. Vacancies in the elective membership of the board shall be filled by appointment by said board of trustees, the appointee to serve until the next meeting of the fund association, when the members of said fund association shall elect a trustee or trustees to serve for the unexpired term or terms. No person shall be appointed by the board of trustees or elected by the members of the fund association as a member of the board of trustees who is not a member of the fund association at the time of the appointment or election.

In the interval between the passage of this act and the time when the first elective members of the board of trustees shall assume office, as hereinbefore provided, the superintendent of education, the state auditor and the attorney general shall constitute a temporary board of trustees of the Teachers' Insurance and Retirement Fund and shall be empowered to perform the duties of said board.

Said board of trustees shall have power to frame by-laws for its own government, not inconsistent with the laws of the state, and to modify them at pleasure; to elect one of its own members as president of the board and to provide and enforce all rules and regulations necessary to carry into effect the provisions of this act; to elect a secretary, who shall serve during the pleasure of the board, and to fix the salary and prescribe the duties of the office of secretary; to authorize the issuance of warrants by the state auditor on the state treasurer for the payment out of said fund of all annuities or benefits payable under the provisions of this act, of the salary of the secretary, and other necessary expenses.

All applications for annuities or benefits under this act must be made to said board. In passing upon said applications said board may summon witnesses and, in the case of applications founded on disability, may require any applicant to submit to a medical examination at his or her own expense, and, in the case of all applicants, may conduct any reasonable investigation to determine the justice of any claim submitted. It may sue or be sued in the name of the board of trustees of the Teachers' Insurance and Retirement Fund, and, in all actions brought by or against it, said board shall be represented by the attorney general. Said board shall constitute a part of the state government, but in any action brought against it by any person claiming to be a beneficiary of said Teachers' Insurance and Retirement Fund it shall not claim immunity from suit.

It shall be the duty of said board to invest as much of the funds in its hands as shall not be needed for current purposes. Such investments shall be made

in the same class of securities as those in which the school funds of the state are required to be invested, and all securities taken upon such investments shall be deposited with the state treasurer; but in case of necessity such securities may be sold in order to raise money for current purposes. No such sale shall be made except by the unanimous vote of said board, such vote to be entered upon the records of its proceedings. All interest obtained from such investments shall be placed in the general fund, to be used for current purposes. A suitable office in the capitol, with suitable furniture and necessary office supplies, shall be provided by the proper state officer for the use of said board of trustees. ('15 c. 199 § 4)

[2864—]5. Meetings—Compensation—The board of trustees shall meet annually at the office of the secretary, in the State Capitol, on the second Saturday in September at an hour to be fixed by the board. Special meetings may be held at any time on the call of the president of said board or by any three members thereof. The state auditor, state superintendent of education and attorney general shall serve as members of said board without additional compensation, but the elective members of said board shall be entitled to compensation at the rate of five dollars per day and necessary expenses, while attending all meetings of said board, to be paid out of the insurance and retirement fund. ('15 c. 199 § 5)

[2864—]6. Fiscal year—Annual report—The fiscal year of the insurance and retirement fund shall begin on the first day of August and shall end on the 31st day of July. The board of trustees shall present annually to the fund association at its annual meeting hereinafter provided for, a report of the condition of said funds for the last preceding year, which shall include the receipts and expenditures on account of the fund, together with a list of the beneficiaries thereof and of the securities in which said fund is invested. A copy of said report shall be sent to the Governor, a copy shall be retained by the state superintendent of education, and a copy sent to each county superintendent, city superintendent, graded school principal, and the superintendent or president of each state educational institution. This report shall be published in the biennial report of the state superintendent of education. ('15 c. 199 § 6)

[2864—]7. State treasurer to be treasurer of fund—The treasurer of the state shall be ex-officio treasurer of the Teachers' Insurance and Retirement Fund, and his general bond to the state shall cover any liabilities for his acts as treasurer of said fund. He shall receive all moneys payable to said fund and pay out the same only on warrants issued by the state auditor upon vouchers signed by the president and secretary of the board of trustees. Said treasurer shall give receipts for all moneys received by him for said fund, shall keep full and correct account of the financial transactions connected therewith, and shall make an annual report to the board of trustees at its annual meeting of the receipts and disbursements and other financial transactions connected with said fund. ('15 c. 199 § 7)

[2864—]8. Who may become member of fund association—Application—Duties of board—Conditions of membership—Any person employed as teacher, when this act takes effect, in any public school in this state or in any other educational institution included in Section One of this act [2864—1] shall be permitted to become a member of the fund association and to receive the benefits of this act, if application be made, in writing to the board of trustees of the Teachers' Insurance and Retirement Fund on or before September 1st, 1917. At the time of making application to the board of trustees as herein provided, such teachers shall notify the local school board or managing body of the institution in which he or she is employed, in writing, of his or her election to come within the provisions of this act and shall authorize said board or managing body as a part of said notice to deduct or withhold on every pay day from his or her salary the amount which he or she would pay into the fund, as specified in Section Two [2864—2].

Any person who shall accept employment in this state as a teacher, as hereinabove defined, after September 1, 1915, and who shall not have been

employed in this state at the time this act takes effect shall by virtue of the acceptance of such employment become subject to all terms, provisions, and conditions of this act, and shall become a member of the fund association. ('15 c. 199 § 8)

[2864—]9. Retirement of teachers—Schedule of annuities—Teachers incapacitated—Benefits, etc.—Any member of the fund association who shall have rendered twenty (20) years or more of service as a teacher in the public schools, one year of which may have been a leave of absence for study, and at least fifteen years of which, including the last five immediately preceding the term of retirement, have been spent in the public schools of this state and who ceases to be employed as a teacher for any reason shall be retired at his or her own request by the board of trustees and receive an annuity in accordance with the following schedule:

For 20 years of service.....	\$350.00
For 21 " "	380.00
For 22 " "	410.00
For 23 " "	440.00
For 24 " "	470.00
For 25 " "	500.00

In computing the time of service of a teacher, the length of the legal school year in the district or institution where such service was rendered shall constitute a year, provided such year shall not be less than seven months. In a calendar year credit shall be allowed for only one year of service. If a teacher teaches for only a fractional part of any year, credit shall be given for such fractional part of a year as the term of service rendered shall bear to the legal school year of such district or institution, but in no case shall the legal year be less than seven months.

Such annuities shall be paid quarterly.

Any teacher who shall become mentally or physically incapacitated after having served as teacher for fifteen (15) years, ten (10) of which shall have been in this state shall be entitled to receive an annual benefit from the insurance and retirement fund equal to as many twentieths of the full annuity for twenty (20) years as the term of total service rendered by such teacher bears to twenty (20) years.

Any person retiring under the provisions of this section may return to the work of teaching in said public schools, but during said term of teaching the annuity or benefit paid to such person shall cease. Said annuity shall again be paid to such person upon his or her further retirement. ('15 c. 199 § 9)

[2864—]10. Termination of membership—Refundment of payments—Death of member—In the event that any member of the fund association ceases to be a teacher in the state and thereby terminates membership in the fund association before drawing an annuity, such member shall, if application be made in writing to the board of trustees within six months after his or her resignation, be entitled to the return out of the fund without interest of such sum as shall equal one-half of all moneys paid into the fund by such teacher; provided further, that, in the event such teacher subsequently returns to teaching in Minnesota and thereby becomes a member of said association, such teacher shall be required to refund to said insurance and retirement fund the amount so drawn with interest thereon at the rate of five per cent per annum, such sum to be refunded within one year from his or her return. In case of the death of any member of this fund association before an annuity shall have been drawn from said fund, the board of trustees shall refund to his or her estate, heirs, or assigns an amount equal to one-half that actually paid into the fund by said member. ('15 c. 199 § 10)

[2864—]11. Annuity not subject to legal process, etc.—The annuity so created shall not be subject to assignment or seizure on legal process against any beneficiary. ('15 c. 199 § 11)

[2864—]12. Reduction of annuities, when—The board of trustees may ratably reduce the annuities provided in this act whenever, in the judgment

of the board, the condition of the fund shall require such reduction. ('15 c. 199 § 12)

[2864—]13. **Annuities, when to be granted and paid**—Annuities may be granted by the board of trustees at any time after the passage of this act, such annuities beginning at the date on which the grant is made, but no payments shall be made before September 1st, 1916. ('15 c. 199 § 13)

[2864—]14. **Teachers to elect two members of board**—At the time and place of the meeting of the Minnesota Educational Association in 1915, those teachers who have qualified as members of the fund association by complying with the provisions of Section 8 [2864—8], of this act shall meet at the call of the state superintendent of education for the purpose of electing from said members of the fund association two members of the board of trustees of the Teachers' Insurance and Retirement Fund, as hereinbefore provided, and annually thereafter at the time and place of the annual meeting of the Minnesota Educational Association the board of trustees shall call a meeting of the members of the fund association for the purpose of electing one or more members, as may be required, of said board of trustees, and hearing the annual report of said board, and of transacting any other business that may properly come before said meeting. ('15 c. 199 § 14)

[2864—]15. **Not applicable to cities of first class**—This act shall not apply to any city of the first class in this state. ('15 c. 199 § 15)

HIGH SCHOOL BOARD

2889. Duties—Private schools—

Under this section state high school board and state superintendent have discretionary powers in fixing requirements of principal in a graded school having a high school department, in connection with the distribution of special state aid. Resolution of high school board prescribing requirements of principal in graded school having high school department, to entitle district to special state aid, only affected school's right to aid, and did not disqualify the teacher. Where relator held a first grade certificate entitling him to teach in any of public schools of state, and his election as principal of schools in a district was legal, he was entitled to have his contract signed and to receive the compensation. Graduate from advanced course of a state normal school holding diploma indorsed by president of school, and by state superintendent, after two years' actual successful teaching is entitled to teach in any public school in the state (162+688). Schools and School Districts, ~~6~~127.

PENALTIES

2900. Excluding or expelling pupils—

To support a judgment imposing a penalty under this section upon a member of the board of education of a city for having voted to exclude a pupil from a public school, the findings must show that the vote related to such pupil and that no sufficient cause existed for the exclusion. That defendant, as a member of the board of education, voted for a resolution requiring pupils of a school who had been exposed to smallpox to be vaccinated or be excluded from school for two weeks, was no basis for holding him liable under this section, where the findings failed to show that plaintiff was either named in the resolution or came within its terms (132-375, 157+501). Schools and School Districts, ~~6~~62.

[2910—]1. **Contracts with members of boards of certain common districts authorized**—Members of any school board in any common school district in this state employing not more than three (3) teachers are hereby authorized and permitted to contract with, do work for, and furnish supplies to such districts when authority therefor is given by the full school board. Provided, that the bills for such claims shall not exceed twenty-five (\$25.00) dollars per annum and that they must be allowed at a board meeting by the unanimous vote of the entire school board. All such bills shall be duly itemized and a full and complete itemized report shall be made at the annual school meeting. ('17 c. 306 § 1)

SCHOOL TAXES

2918. **Same**—In districts having 50,000 inhabitants not in cities of first class under home rule charters—In all districts having 50,000 inhabitants or

more, there may be levied annually, independently of and in addition to other sums for school purposes authorized by law, the following additional amounts:

First: An amount equal to six mills on each dollar of the taxable property of the district for the purchase of school sites and the erection, repair, furnishing and fitting of school buildings, payment of teachers' salaries, and the general maintenance of the schools.

Second: An amount equal to three-fourths of one mill on each dollar of the taxable property of the district, to be used only for the purposes of the repair, upkeep and maintenance of public school buildings and the equipment thereof:

Third: An amount equal to four-tenths of one mill on each dollar of the taxable property of the district for the support and maintenance of evening and summer schools for elementary and high school grades:

Fourth: An amount equal to one-tenth of one mill on each dollar of the taxable property of the district for additional salaries for janitors, engineers and firemen. An amount equal to one-half of one mill on each dollar of the taxable property of the district for the years 1917, 1918 and 1919, for the purpose of paying and discharging existing indebtedness arising from the maintenance and operation of the schools of such district.

Fifth. An amount not exceeding one mill on each dollar of the taxable property of the district, to be used only for the purpose of paying that portion of the salary over \$1,000 of any or all of the grade teachers of the district, and paying that portion of the salary over \$1,500 of any or all high school teachers of the district. The term "grade teachers" and "high school teachers," as last above used, shall not include any superintendent, assistant superintendent, principal, supervisor, or director, employed in any grade school or high school of the district. Provided that the total levy in any such district, for the maintenance of the school, shall not exceed twelve and three-fourths (12¾) mills on each dollar of the taxable property of the district, not including the state and county school tax. Provided, however, that the provisions of this act shall not apply to school districts within the limits of a city of the first class operating under a home-rule charter, which fixes the amounts which may be expended for school purposes. (Amended '07 c. 308; '13 c. 270; '15 c. 265; '17 c. 372 § 1)

2919, 2920. [Repealed.]

See note under § [2920—]1.

[2920—]1. Same—In districts having 20,000 and not more than 50,000 inhabitants—That each public school district in the State of Minnesota which now has or hereafter may have 20,000, and not more than 50,000, inhabitants, is hereby authorized and empowered to annually levy for the general fund of such district a school tax not exceeding thirteen mills on the dollar of the valuation of all taxable property in such school district, according to the last preceding official assessment thereof. ('15 c. 27 § 1)

Section 3 repeals 1911 c. 24 [2919, 2920].

[2920—]2. Same—To what districts applicable—The provisions of this act shall apply to every public school district within the above mentioned class, whether existing under general or special law, and for the purposes of this act the population of each public school district in this state shall be ascertained and determined according to the last census taken under and pursuant to the laws and authority of the State of Minnesota. ('15 c. 27 § 2)

2921. Tax in certain special districts having not less than 10,000 nor more than 20,000 inhabitants—Special school districts now or hereafter having not less than ten thousand inhabitants nor more than twenty thousand inhabitants, are hereby empowered to annually levy for general school purposes a general school tax not exceeding fifteen mills on the dollar of the valuation of all taxable property in such school districts, according to the preceding official assessment thereof. This act shall not apply to school districts, the boundaries of which extend into two or more counties. ('13 c. 115, amended '15 c. 201 § 1)

[2921—]1. **Same—Bond issue**—The electors of such special school districts are hereby empowered to issue bonds for permanent improvements in any sum not exceeding twelve per cent of their last official assessed valuation. ('13 c. 115, amended '15 c. 201 § 2)

[2921—]2. **Same—Acts repealed**—Any part of Chapter 156 of the Special Laws of 1878, or any part of Chapter 510 of the Special Laws of 1889, and all acts and parts of acts conflicting with or inconsistent with this act, are hereby repealed. ('15 c. 201 § 3)

STATE AID

2927–2948. [Superseded.]

See §§ [2948—]1 to [2948—]16.

For express repeal of sections 2939, 2940, see § [2828—]17.

[2948—]1. **State funds for aid to public schools**—For the purpose of aid to public schools there shall be established the following state funds:

(a) The Endowment Fund, which shall consist of the income on the permanent school fund.

(b) The Annual Fund, which shall consist of the sums appropriated by the legislature for special aid to public schools or departments in the schools.

(c) The Current School Fund, which shall consist of the amount derived from the state one mill tax. ('15 c. 296 § 1)

Section 17 repeals all acts and parts of acts inconsistent with the provisions of this act. By § 18, this act takes effect August 1, 1915.

[2948—]2. **Board of education to distribute funds**—The state board of education shall distribute the annual funds and any other sums appropriated by the state to schools and libraries in such manner and upon conditions as will enable them to perform efficiently the services required by law, and to further the educational interests of the state. To this end the state board shall have power to fix the requirements for receiving and sharing in the state aid provided that rural schools which now have, or which may hereafter obtain a library of 200 volumes, or more, heretofore or hereafter purchased in accordance with the rules prescribed by said state board, shall not be required to add thereto except when, and as often, only, as the local board or the voters of the district may desire within the limits now fixed. ('15 c. 296 § 2, amended '17 c. 267 § 1)

[2948—]3. **Endowment fund, how distributed**—The endowment fund shall be distributed semi-annually to school districts whose schools have been in session at least six months, in proportion to the number of scholars of school age who have attended school at least forty (40) days during the preceding year.

The annual funds shall be distributed as follows: ('15 c. 296 § 3)

[2948—]4. **Annual funds, how distributed**—Rural schools in session at least eight months, shall receive one hundred and fifty dollars (\$150) for each teacher holding a first class certificate. Rural schools in session at least seven months annually shall receive one hundred dollars (\$100) for each teacher holding a second class certificate. ('15 c. 296 § 4)

[2948—]5. **Amount to graded schools**—A graded school in session at least nine months in the year shall receive six hundred dollars (\$600) and an additional one hundred dollars (\$100) for each grade teacher employed in excess of four, counting the principal as a teacher.

A graded school may receive an additional two hundred and fifty dollars (\$250) for each high school teacher.

The total aid to a graded school on this basis shall not exceed thirteen hundred dollars (\$1,300).

No graded school in the same district with an aided high school shall receive annual aid. This provision shall not apply to districts of ten or more townships. ('15 c. 296 § 5)

[2948—]6. **Amount to high schools**—A high school in session at least nine months in the year shall receive annually eighteen hundred dollars (\$1,800). ('15 c. 296 § 6)

[2948—]7. **Additional amounts to schools maintaining courses in industrial subjects**—High, graded or consolidated schools, maintaining courses in agriculture, home training (including cooking and sewing), manual training, or commercial training, shall receive one thousand dollars (\$1,000) for the agricultural course, and six hundred dollars (\$600) for each course in home training (including cooking and sewing), manual training, and commercial training.

Aid to each of these departments shall not exceed the sums paid as salaries in the respective departments. ('15 c. 296 § 7)

See §§ [2828—]1, [2828—]14.

[2948—]8. **Additional amounts to high schools maintaining training department for rural teachers**—High schools maintaining a department for training rural teachers shall receive annually twelve hundred dollars (\$1,200). A school employing more than one teacher in such department may receive not to exceed two thousand dollars (\$2,000). A school employing more than two teachers in such department and in enrolling not less than fifty students, may receive not to exceed twenty-eight hundred dollars (\$2,800.00). ('15 c. 296 § 8)

[2948—]9. **Amounts to consolidated schools**—Consolidated schools of class A shall receive annually five hundred dollars (\$500).

Consolidated schools of class B shall receive annually two hundred and fifty dollars (\$250).

In addition to this annual aid consolidated schools shall be reimbursed for the amount reasonably expended for transportation of pupils, not to exceed two thousand dollars (\$2,000).

Districts providing school buildings for consolidated school purposes may be reimbursed up to one-fourth of the cost of such buildings, but not to exceed two thousand dollars (\$2,000). ('15 c. 296 § 9)

[2948—]10. **Aid for libraries**—Each school shall receive in addition to other aid, library aid amounting to ten dollars (\$10) for each teacher employed, with a maximum of twenty-five dollars (\$25) to a building, provided the district appropriates a like amount for the same purpose. ('15 c. 296 § 10)

[2948—]11. **Other amounts allowed**—Districts whose local tax levy for maintenance of schools exceeds twenty mills (20) in any year may receive in addition to other aid, one-third of the amount raised in excess of that received from the twenty (20) mill levy with a maximum of twenty-five hundred dollars (\$2,500) to each high school, eighteen hundred dollars (\$1,800) to each graded school, and to rural schools, two hundred dollars (\$200) for each teacher. ('15 c. 296 § 11)

[2948—]12. **Amounts to rural schools associated with central schools**—Rural school districts associated with a central school shall receive annually fifty dollars (\$50) on account of such association.

The central school with which a rural school or rural school district is associated for the purposes herein stated shall maintain departments in agriculture and such other industrial subjects as the state board of education may require, and shall receive annually two hundred dollars (\$200) for each such associated rural school or school district. ('15 c. 296 § 12)

[2948—]13. **Distribution of current school fund**—The current school fund shall be distributed to school districts as follows:

The state auditor shall set aside from the current school fund an amount not to exceed one hundred and fifty thousand dollars (\$150,000) each year for the following purposes:

(a) To assist any school district which does not maintain a state high or state graded school in maintaining its public schools, when a levy of fifteen (15) mills in such district does not raise five hundred dollars (\$500) for each school in session seven (7) months during the year.

The state board of education may expend not to exceed two hundred dollars (\$200) for each such school.

(b) To make up for any deficit which may arise in payment of the annual funds to schools, or to special departments in certain schools.

(c) To pay the tuition of non-resident pupils enrolled in the industrial departments of state high, graded, or consolidated rural schools which have been designated by the state board to maintain courses and instruction in agriculture, home training, (including cooking and sewing), manual training, and commercial training, and whose residence district does not provide courses and instruction of like kind. ('15 c. 296 § 13)

[2948—]14. **Non-resident high school students—Tuition, etc.**—A high school student whose residence district provides high school courses of instruction shall not be entitled to free admission to the high school of any other district except by permission of the school board of such other district, or in accordance with the rules of the state board of education.

The rate of tuition shall be fixed by the state board of education, but not to exceed two dollars and fifty cents (\$2.50) per month for each non-resident pupil, nor more than nine (9) months in any school year.

No non-resident pupil shall be entitled to have any tuition made a charge against the state whose residence district furnishes courses and instruction in the industrial studies. Nor shall pupils from any associated district be counted for payment of tuition in the central school of the same district.

No tuition shall be charged any pupil, resident of this state, who is enrolled in the high school department of any state high or graded school, except in the industrial departments above specified.

The state board of education shall make proper rules relating to enrollment, attendance, rates of tuition, payment of the endowment and current funds, on account of such non-resident pupils. ('15 c. 296 § 14)

[2948—]15. **Distribution of balance of current fund**—The balance of the current school fund shall be distributed on the same basis and at the same time as the endowment fund. ('15 c. 296 § 15)

[2948—]16. **Authority, where vested**—In case the state board of education referred to in this act shall not be provided by law, the authority herein granted to such board will vest in the state high school board and the state superintendent of education in accordance with the provisions of existing law. ('15 c. 296 § 16)

[FEDERAL AID]

[2948—]17. **Provisions of federal act for promotion of vocational education, etc., accepted**—The provisions of the act of congress of the United States entitled an act to provide for the promotion of vocational education; to provide for co-operation with the states in the promotion of such education in agriculture and the trades and industries; to provide for co-operation with the states in the preparation of teachers of vocational subjects; and to appropriate money and regulate its expenditures, and approved February 23, 1917, be and the same are hereby accepted, and the benefits of all funds appropriated under the provisions of such act are hereby accepted as provided in such act. ('17 c. 491 § 1)

Section 7 repeals inconsistent acts, etc.

[2948—]18. **Powers and duties of high school board**—The high school board is hereby designated the state board as provided in such act, and is charged with the duty and responsibility of co-operating with the federal board for vocational education in the administration of such act and is given all power necessary to such co-operation. The high school board is authorized to make such expenditures as it may deem necessary to carry out the provisions hereof from moneys available for the purposes of this act. In case a state board of education is created, such board shall have the powers and perform the duties with which the high school board is charged by the terms of this act. ('17 c. 491 § 2)

[2948—]19. **Duties of state treasurer**—The state treasurer is appointed custodian of all funds for vocational education, as provided in such act, and is charged with the duty and responsibility of receiving and providing for the proper custody and proper disbursement of moneys paid to the state from the appropriations made under the provisions of such act. ('17 c. 491 § 3)

[2948—]20. **What districts entitled to federal moneys—Teachers training schools**—Any school district maintaining a vocational school or department shall be entitled to Federal moneys under such act for the salaries of teachers of agricultural, industrial or home economics subjects by meeting the requirements fixed by the high school board and approved by the federal board for vocational education. Teacher training schools and departments shall be entitled to federal moneys for the preparation of teachers of agricultural, industrial or home economics subjects by meeting the requirements fixed by the high school board and approved by the federal board for vocational education for the preparation of such teachers. ('17 c. 491 § 4)

[2948—]21. **Disbursements, how made**—All disbursements of federal and state moneys for the benefit of such teachers training schools or departments shall be made on the requisition of the high school board by the state treasurer or to the legally constituted authorities having custody of the moneys of such training schools or departments. All disbursements of federal and state moneys for the benefit of such vocational schools and departments shall be made on the requisition of the high school board by the state treasurer to the treasurer legally qualified to receive and disburse the funds for the school districts establishing and maintaining such schools and departments as herein provided. ('17 c. 491 § 5)

[2948—]22. **Annual reports**—The state treasurer as custodian for vocational education shall make to the legislature at each bi-ennial session a report of the receipts and disbursements of moneys received by him under the provisions of such act and the high school board shall make to the legislature at each bi-ennial session a report of its administration of such act and the expenditure of money allotted to the state under the provisions of such act. ('17 c. 491 § 6)

TRAINING OF TEACHERS

2967. Normal schools—

1917 c. 55 authorizes conveyance of certain real estate, being part of the normal school property at St. Cloud.

COMPULSORY EDUCATION

2987. **Truant schools**—Such boards may maintain ungraded schools for the instruction of children of the following classes between eight and sixteen years of age:

1. Habitual truants.
2. Those incorrigible, vicious or immoral in conduct.
3. Those who habitually wander about the streets or other public places during school hours, without lawful employment.

All such children shall be deemed delinquent and the board may compel their attendance at such truant school, or any department of the public schools, as the board may determine, and may cause them to be brought before the juvenile court of the county for appropriate discipline. (Amended '17 c. 239 § 1)

1917 c. 239 § 2 repeals § 2988.

2988. [Repealed.]

See note under § 2987.

ACTIONS AND JUDGMENTS

2996. Actions against districts—

An action will lie against a district to recover tuition of pupils sent to another district for training in agriculture and domestic science, under §§ 2820, 2823 (122-254, 142+325, 47 L. R. A. [N. S.] 200). *Schools and School Districts*, §=159.

2997. Judgment paid by treasurer—

This section affords authority for payment of a judgment against a school district for tuition of pupils sent to another district for special training in agriculture and domestic science under §§ 2820, 2823 (122-254, 142+325, 47 L. R. A. [N. S.] 200). Schools and School Districts, *§* 159.

STATE UNIVERSITY**3010. Board of Regents—**

The University of Minnesota is a governmental function, and property for its use may be taken under the power of eminent domain (125-194, 145+967). Eminent Domain, *§* 40.

[3033—]1. **Cooperative agricultural extension work between agricultural colleges in several states**—Whereas, the Congress of the United States has passed an Act approved by the President, May 8, 1914, entitled, "An Act to provide for cooperative agricultural extension work between the agricultural colleges in the several states receiving the benefits of the Act of Congress, approved July 2, 1862, and of Acts supplementary thereto, and the United States Department of Agriculture," and,

Whereas, it is provided in Section 3 of the Act aforesaid that the grants of money authorized by this Act shall be paid annually "to each state which shall by action of its legislature assent to the provisions of this Act," therefore be it

Resolved by the House of Representatives, the Senate concurring, of the legislature of the State of Minnesota that assent be and is hereby given to the provisions and requirements of said Act, and that the University of Minnesota be and it is hereby authorized and empowered to receive the grants of money appropriated under said Act, and to organize and conduct agricultural extension work which shall be carried on in connection with the College of Agriculture of the University of Minnesota in accordance with the terms and conditions expressed in the Act of Congress aforesaid. ('15 c. 378)

3057, 3058. [Superseded.]

See §§ [3058—]1, [3058—]2.

[3058—]1. **Free education to soldiers of Spanish-American war and certain other soldiers**—That any person who, being at the time a resident of the state of Minnesota, enlisted in the army, navy or marine corps of the United States during the late war between the United States and the Kingdom of Spain, or who has been a resident of the state of Minnesota for the past 15 years and is a veteran of the late civil war, and who was honorably discharged therefrom, or who answered the call of the President of the United States for troops for Mexican border service, made on June 18th, 1916, and who served in Minnesota organizations in the federal service under the provisions of said call for a period of not less than ninety (90) days, and who has been or may hereafter be honorably discharged therefrom, shall upon complying with all other requirements for admission, be entitled to pursue any course or courses in the university of Minnesota, without expense for tuition, provided, however, that the tuition hereby granted shall not exceed in value the sum of \$250.00 to any one person. ('99 c. 345, § 1, amended '01 c. 25; '17 c. 279 § 1)

Section 3 repeals inconsistent acts, etc.

See §§ 3057, 3058.

[3058—]2. **Same—Duty of regents**—It is hereby made the duty of the board of regents of the university of Minnesota to accept in any college, school or department thereof any student who comes within the definition of section one of this act, without any charge to said student for tuition to the amount specified in this act, and to refund to any student who may come under the provisions of this act any money which he has paid in as tuition since his discharge in excess of \$250.00. ('99 c. 345 § 2, amended '17 c. 279 § 2)

3059. Transportation between university campus and farm—

The University of Minnesota is a governmental function, and 1913 c. 257, authorizing the construction of a railway for the use of the university, is constitutional (125-194, 145+967). Eminent Domain, *§* 40.

[3059—]1. **Certain conveyances and leases confirmed**—That any and all conveyances of real estate or leases of real estate heretofore made by the Uni-

versity of Minnesota, a corporation, organized by authority of the Legislature of the State of Minnesota, and which said conveyances and leases, or either of them, have been duly approved by the Board of Regents of said University of Minnesota, be and the same are hereby approved, ratified and confirmed, and such conveyances or leases, or either or any of them, are hereby legalized and validated. ('15 c. 54)

MANAGEMENT OF STATE UNIVERSITY AND NORMAL SCHOOLS

3060, 3061—

See §§ [3066—]1 to [3066—]7.

3063-3066—

See §§ [3066—]1 to [3066—]7.

[3066—]1. Comptroller for University—Bond—Compensation—The board of regents of the state university is hereby authorized to appoint some suitable person to the office of "comptroller" for the university, which office is hereby created.

Such person shall hold office at the pleasure of the board of regents. Before entering upon the performance of his duties he shall give bond to the state in the sum of twenty thousand (\$20,000) dollars, conditioned for the faithful performance of his official duties. If a surety bond is given the cost thereof may be paid by the university from its appropriation for maintenance. The comptroller shall receive such compensation as shall be fixed by the board of regents, to be paid from the appropriations for maintenance of the university. ('17 c. 486 § 1)

Section 7 repeals inconsistent acts, etc.

[3066—]2. Same—Duties—The comptroller shall have charge, under the general direction and supervision of the board of regents, of all the business affairs of the university, including accounting, purchasing of materials and supplies, the business relations of the university with the board of control, the administration of the financial budget of the university and the care of the buildings and grounds of the university. ('17 c. 486 § 2)

[3066—]3. Same—Chief accountant, purchasing agent, superintendent of buildings, etc.—Compensation—The comptroller, subject to the approval of the board of regents, may employ a chief accountant, purchasing agent and superintendent of buildings and grounds and such other employes as may be necessary to the proper administration of the duties hereinbefore devolving upon him. Such employes shall receive such compensation, to be paid from the appropriations for the maintenance of the university, as shall be fixed by the board of regents. ('17 c. 486 § 3)

[3066—]4. Same—Budget—It shall be the duty of the comptroller on or before the first day of August in each year to formulate under the direction of the board of regents, a "budget" for the ensuing fiscal year. Such budget shall contain a detailed estimate of the funds which will be available for expenditure by the university for the next ensuing year and apportionment of such funds for expenditure to the various colleges, departments and divisions of the university. A copy of such budget, approved by the board of regents, shall be filed with the comptroller and a copy thereof to the state auditor. The comptroller shall not make or authorize any disbursement except as provided for in such budget, without the written consent and direction of the board of regents. ('17 c. 486 § 4)

[3066—]5. Same—Payment of salaries, etc.—Duties of deans—The payment of salaries and supplies shall be in conformity with the budget as approved by the board of regents and the method of procedure shall be in conformity with the system approved by the state auditor, state treasurer, attorney general and public examiner. The dean or other acting head of the college or department shall certify the list of departmental instructors and employes as provided for in the budget. It shall not be necessary that such list be signed or receipted by the persons named therein and to whom payments are to be made. ('17 c. 486 § 5)

[3066—]6. **Same—Duties of purchasing agent**—The purchasing agent hereinbefore provided for, shall have charge, under the general direction and supervision of the comptroller, of the purchase of all materials and supplies for the university and the several colleges and departments thereof, the purchase of which is not by law entrusted to any other board or officer. ('17 c. 486 § 6)

[3066—]7. **Same—Purchasing by state board of control**—Nothing in this act shall in any way repeal, modify or affect chapter 174, General Laws of Minnesota for 1917 [4033—1], being a bill for an act to provide for the purchasing by the state board of control of stationery, furniture, supplies and equipment for all the governmental departments of the state, not now under the financial and exclusive management of said board, and repealing all acts and parts of acts inconsistent herewith, approved April 10th, 1917. ('17 c. 486 § 8)

CHAPTER 15

RELIEF OF THE POOR

GENERAL PROVISIONS

3067. Support of poor—Liability of relatives—

A physician and a hospital may recover compensation for the reasonable value of medical services rendered to a dependent relative of defendant, where the services were immediately and imperatively necessary, though defendant had no knowledge of the rendition of the services at the time they were rendered (130-198, 153+307, L. R. A. 1915E, 844). Paupers, ¶37(1).

Evidence held to sustain a finding that defendant's son, to whom plaintiff rendered medical and surgical services, was not a pauper or a poor person unable to earn a livelihood (132-370, 157+508). Paupers, ¶37(2).

The general statutory system of providing for the poor does not curtail the power of the legislature to provide for the care of dependent children (§ 7197), or prevent enforcement of that provision (123-382, 143+984, 49 L. R. A. [N. S.] 597). Infants, ¶12.

One relative of a pauper who furnishes support not as voluntary matter, may recover of the others by way of contribution (126-87, 147+824, Ann. Cas. 1915D, 241). Contribution, ¶6.

3068. Failure to support—Recovery under town system—

126-87, 147+824, Ann. Cas. 1915D, 241; note under § 3067.

3069. Liability of county, town, etc.—

129-534, 152+1102; 126-87, 147+824, Ann. Cas. 1915D, 241; note under § 3067.

3071. Settlement—

This section does not change the rule that a woman who marries while she is a pauper changes her legal settlement and takes that of her husband (129-395, 152+767). Paupers, ¶21(2).

What constitutes place of settlement of a poor person (126-512, 148+469). Paupers, ¶16(1).

The question of the residence of a pauper held for the jury (127-527, 149+1070).

3072. Removal of poor person—Settlement—

A municipality, furnishing relief to a poor person having a settlement in another municipality, may recover therefor from the latter, where the latter, before the relief was afforded, disclaimed responsibility, though the pauper was not removed to the place of her settlement (131-41, 154+660). Paupers, ¶39(5).

COUNTY SYSTEM

3075. County board, superintendents of poor—Poorhouse—

County commissioners, having the power to acquire land for a poor farm, had the right to ascertain and agree upon the boundary line and for the erection and maintenance of a partition fence (126-206, 148+115). Counties, ¶113(1).

G. S. 1894 § 1956, cited—126-206, 148+115.

3083. Settlement in another county—

A poor person held to have a settlement in the city of Minneapolis, so that plaintiff, furnishing support to such person, had a right of action against the city under this section (126-512, 148+469). Paupers, ~~§~~16(1), 39(5), 52(1).

A municipality, furnishing relief to a poor person having a settlement in another municipality, may recover therefor from the latter, where the latter disclaimed responsibility, though the pauper was not removed to her place of settlement as provided by statute (131-41, 154+660). Paupers, ~~§~~39(5).

3092. Salaries of members of board of control and almshouse and hospital physician—The salary of each member of the board of control of any county in this state shall be nine hundred dollars per annum, and each such board is authorized to fix the salary of the alms house and hospital physician, appointed by it, at such sum not exceeding \$5,000 per annum as the board may deem proper. The salaries named herein shall be payable monthly out of the funds appropriated, on account of salaries, or otherwise, for the maintenance of the board. ('05 c. 79 § 1, amended '15 c. 80 § 1)

[3093—]1. Board of control—Bills, claims, etc., how paid—In every county of this state in which there exists or shall hereafter exist a board of control which is maintained by funds supplied in proportionate parts by a city within said county and by the county, all bills, claims and demands against said board of control shall be allowed and shall be paid as follows:

Said board of control shall certify monthly, upon the signature of its chairman, or in his absence, its vice chairman, and its secretary, to the county auditor of such county, a pay-roll or statement giving the name, position and salary of each of its employes, and the period during which services were rendered and salary earned. It shall certify a similar pay-roll to the council of said city for the payment of its proportionate part thereof. Upon the receipt of said pay-roll, said county auditor shall issue his warrant directing the county treasurer of said county to pay to said board of control the county's proportionate part of the aggregate amount of said pay-roll. Upon the receipt of said pay-roll so certified to the city council by the comptroller after the same has been audited by said city comptroller, said council shall direct the treasurer of said city to pay to said board of control, the city's proportionate part of the amount of said pay-roll. All accounts, bills, claims or demands against any such board of control, except claims included in pay-rolls as hereinbefore specified, shall be reduced to writing in items, and verified by the person claiming the same or his agent, to the effect that such account, bill, claim or demand is just and true, that the property therein charged was actually delivered or used for the purposes therein stated, and is of the value therein charged, and that the services therein charged were actually rendered and were of the value therein charged, and that no part of such account, bill, claim or demand has been paid. Said account, bill, claim or demand shall be in duplicate.

Said board of control shall, monthly, cause to be presented to the board of county commissioners of said county, all such accounts, bills, claims or demands against said board of control, and shall at the same time cause to be presented to the council of such city, the duplicates of all such accounts, bills, claims or demands against said board of control.

Said board of county commissioners shall allow said accounts, bills, claims or demands, in whole or in part, and thereupon there shall issue the warrant of the chairman thereof, attested by the auditor, directing the county treasurer of said county to pay to said board of control the county's proportionate part of the aggregate amount of all of said accounts, bills, claims or demands so allowed.

Said council shall, after audit by the city comptroller, allow said accounts, bills, claims or demands, in whole or in part, and shall direct the city treasurer of said city to pay to said board of control the city's proportionate part of the aggregate amount of all of said accounts, bills, claims or demands so allowed. ('15 c. 4 § 1)

[3093—]2. Same—Moneys, how deposited—Bond—All moneys paid to said board of control under the provisions of this act, as soon as received, shall be deposited by said board of control, in the name of said board of

control, in one or more banks designated by said board of control to be the depositaries of the funds of said board of control. Every bank or banker, upon being designated as a depositary of said board of control, shall deposit with the county treasurer of said county, a bond, approved by the county board, in at least double the amount to be deposited, payable to the board of control, and it shall be given for the term of two years. Securities may be deposited with said county treasurer in lieu of said bond in the same manner and upon the same terms as is now provided with reference to county depositaries. ('15 c. 4 § 2)

[3093—]3. **Same—Checks, how issued**—Said board of control shall issue checks against the funds so deposited for pay-rolls payable to the persons employed in and about such institutions as certified to in said approved pay-roll. Said board of control shall issue checks against funds so deposited in the full amounts and to the persons, companies or corporations only, specified in said accounts, bills, claims or demands allowed as hereinbefore provided, and said checks so issued shall by number or otherwise show their connection with said accounts, bills, claims or demands. All checks issued by said board of control shall be signed by its chairman, or in his absence by its vice chairman, and shall be attested by its secretary. ('15 c. 4 § 3)

[3093—]4. **Same—Bonds of chairman and secretary**—The chairman of said board of control and the secretary of said board of control shall each give a bond to secure the faithful performance of their respective duties, payable to said city and said county, in the proportionate amounts furnished by the city and county respectively, in supporting said board of control; each of said bonds to be in the sum of fifteen thousand dollars (\$15,000.00), and to be executed by a responsible surety company. Said bonds shall be approved by the board of county commissioners of said county, and shall be deposited with the county treasurer of said county. The premiums upon said bonds shall be paid as other claims against said board of control are paid. ('15 c. 4 § 4)

[3093—]5. **Contracts for care of certain persons at poor house—Power of county board**—The board of county commissioners of any county now or hereinafter maintaining a poor house for the reception and support of poor persons chargeable on such county are hereby authorized to enter into contracts for the support and care at such poor house of aged and decrepit persons or indigent persons who are then actual residents of said county, for a stipulated sum per week, provided, however, that said sum shall be one amply sufficient to fully reimburse the county, unless such person is an indigent person, and provided further that the county board shall have the privilege and right to terminate such contracts whenever such board may deem it for the best interest of the county so to do. ('15 c. 321 § 1)

TOWN SYSTEM

3094. Town board and councils to be superintendents—Relief—

The relief provided by the mothers' pension law (§ 7197) is operative in a county having a town system of caring for the poor, as well as elsewhere, and also in a city in such county, though it maintains its own pauper system (123-382, 143+984, 49 L. R. A. [N. S.] 597). Infants, $\$12\frac{1}{2}$.

3096. **Powers and duties of supervisors and councils**—Each board and council shall have the following powers and duties:

1. It may appoint a practicing physician to be physician of the poor, who shall hold office during its pleasure, and receive such compensation as it may from time to time determine. When directed by a member of the board or council, such physician shall attend upon and prescribe for any sick poor person entitled to support or relief from the town, city or village.

2. Whenever any person not having a legal settlement therein shall be taken sick, lame or otherwise disabled, or for any other cause shall be in need of relief as a poor person, and shall make application for relief to any such board or council of such municipality, its chairman, mayor or president shall warn him to depart; and if he is unable or refuses to do so within a

reasonable time and is likely to become a public charge, such chairman, mayor or president may, in writing require any constable or marshal of the town, city or village to convey him to the place of his settlement, if he have a settlement in this state. If such person is so sick or infirm as to render it unsafe or inhuman to remove him, and is in need of immediate support or relief, the board or council shall provide such assistance as it deems necessary, and if he dies, shall give him decent burial. The expense so incurred shall be paid by the town, city or village, and shall thereupon become a charge against the county. Upon payment thereof, the county may recover the same from the county, town, city or village of such person's settlement, if he have any within this state. Within five days after such person becomes a public charge, the board or council shall notify the county auditor, and thereupon the county board may take him in charge, or relieve him in such manner as it may seem fit.

3. When any minor becomes chargeable upon any town, city or village for support, the board or council, or a member thereof, shall apply to the county board to secure his admission to the state public school, or secure him a home with some respectable householder, if one can be found who will take him. (Amended '17 c. 39 § 1)

In a county where the town system of caring for the poor is in force, the ultimate liability for the care of a pauper, who has no legal settlement anywhere in the state for the purpose of poor relief, does not rest upon the county in which is located the town where the pauper is when he becomes a charge (135-183, 160+669). Paupers, ~~§~~39(3).

[COUNTIES CONTAINING 80 TOWNSHIPS, ETC.]

[3108—]1. Board of poor and hospital commissioners—Appointment—Qualifications—Terms—Vacancies—Officers—Rules, etc.—In all counties in this state containing not less than eighty congressional townships, and having an assessed valuation of not less than twenty million dollars, and not exceeding fifty million dollars, there shall be appointed, as herein provided, a board of poor and hospital commissioners, consisting of five members, who shall be electors of said county. Such board shall be appointed by the board of county commissioners of such county, with the approval of the judges of district court of the judicial district in which, by resolution in writing duly adopted by said board of county commissioners, and filed in the office of the county auditor of such county. No member of the board of county commissioners shall be eligible to such appointment. The terms of two of the members of the first board so appointed shall expire on the first Monday in January of the second year after their appointment; and the terms of three members of the first board so appointed shall expire on the first Monday in January of the third year after their appointment. Upon the expiration of such first terms their successors shall be appointed in like manner for terms of three years each. Vacancies shall be filled by like appointment for the unexpired terms. All appointments, including those to fill vacancies and those for regular terms, shall be by resolution, and approved by the judges of the said district court, as aforesaid. Such board of poor and hospital commissioners shall elect one of its members to be president, and one of its members to be vice president, each to serve for one year, and until their successors are elected and qualified. Such board shall also appoint a clerk, as hereinafter provided. Such election of president and vice-president shall be by the vote of a majority of the members of said board, which vote shall be duly recorded in the minutes and proceedings of said board. And the appointment of said clerk shall also be duly entered in the minutes, records and proceedings of said board. A certified copy of such minutes and records of said board, showing the election of said officers and the appointment of said clerk, shall be filed in the office of the county auditor. Said board shall also adopt by-laws and make all necessary rules and regulations for its conduct and government, including the times and places for holding its meetings, and may amend such by-laws, rules and regulations at any time at a legal meeting of the board. The members of said board shall receive no compensation for their services or

expenses. The board of county commissioners of the county shall provide a suitable room in the court house of such county for the meetings and use of such board of poor and hospital commissioners. ('17 c. 187 § 1)

Section 6 repeals inconsistent acts, etc.

[3108—]2. Powers and duties of board—Such board of poor and hospital commissioners shall have all the powers and duties relative to the care of the poor which, in counties having the county system, appertain to the county board. All moneys arising from the labor of poor persons in its care, or from the produce of the poor farm, shall be paid to the board and by it into the county treasury to the credit of the poor fund. No money shall be paid from such fund except on vouchers of the board, signed by its president or vice-president, and countersigned by its clerk. On the first Monday of January, April, July and October of each year, the board shall file with the county auditor an itemized statement of its receipts and expenditures for the preceding three months. Said board shall have full, complete and exclusive charge of and control of the poor of such county, and the handling, use, paying out and expending of all moneys for poor purposes in such county, including the poor fund thereof. In each of said counties having a county hospital, or in which there shall be established or provided a county hospital under the laws of this state, such board shall have the full, complete and exclusive control, care, management, maintenance and operation of such hospital and shall operate the same as a county hospital. Said board shall provide such by-laws, rules and regulations in reference to such hospital, as to the control, management, maintenance and operation thereof, as it shall deem necessary, proper or desirable. It shall fix the rates to be charged all patients cared for in such hospital, including the rates to be charged against the county for paupers or poor persons cared for at the request of such county. It shall appoint a superintendent of such hospital, who shall hold his office at the pleasure of said board, fix his salary, and prescribe his powers, duties and responsibilities. It shall have the power to employ and pay such other assistants, servants, physicians, surgeons, nurses and other employees as may be necessary or desirable for the maintenance and operation of such hospital. The amounts due, or to become due, from patients and others who may be served by said hospital, shall be collected by and paid to said board. Said board shall require to be kept accurate and complete books of account of all receipts and disbursements in the matter of the maintenance of such hospital, and on the first Monday in January of each year shall file with the county auditor an itemized statement of all such receipts and expenditures for the preceding year, which statement shall be appended to and published with the financial statement of such county. ('17 c. 187 § 2)

[3108—]3. Clerk—Powers and duties—Compensation—Assistants—Such board of poor and hospital commissioners shall appoint a clerk, to serve during the pleasure of such board, and fix his compensation which shall not exceed one hundred twenty-five (\$125.00) dollars per month, to be paid out of the county poor fund. Such clerk shall keep a record of all the doings of the board, preserve all documents relating to its business, keep an account of all receipts and expenditures, the names and addresses of all persons to whom relief has been granted, with the amount of such relief, investigate the condition and needs of all persons by or for whom application is made for relief, and report to the board thereon. The board may authorize such clerk to grant temporary relief in cases of emergency, without previous action by the board, but it shall be [by] proper resolution limit the amount of such temporary relief to be so granted. Such clerk shall perform all of the duties and services, both as to such hospital and to the matter of the poor, as shall be prescribed by said board. The board may appoint such other assistants as may be necessary to discharge its duties. ('17 c. 187 § 3)

[3108—]4. Same—Taxes, how levied, etc.—Taxes shall be levied by said board for the support of the poor and for said hospital as follows: On or before the first day of October in each year said board shall determine, by sepa-

rate resolutions duly passed, the amount of taxes to be levied for the ensuing year for the support of the poor in such county, the maintenance of the poor house and other buildings provided for the care of the poor, including the erection of any building or the making of any improvements for such purpose, and for the care, support, maintenance and operation of said hospital. The adoption of such resolution shall constitute a levy on the taxable property in such county to the full amount named therein, provided, however, that the tax so levied for said hospital purposes shall not exceed five-tenths of one mill (5/10 of \$.001) upon the said taxable property in said county. On or before the fifth day of October in each year said board shall file a certified copy of each of said resolutions with the county auditor of such county, who shall thereupon enter the amount upon the tax list, and thereafter proceed to the assessing and collecting of such tax in the same manner as village or corporation taxes. Such taxes when collected shall be placed in, or credited to the hospital fund and to the poor fund, respectively. ('17 c. 187 § 4)

[3108—]5. **Partial invalidity**—Should any paragraph or separate provision of this act be held invalid by any court having jurisdiction thereof so to determine, such decision or judgment shall not be held to affect any other paragraph or provision hereof or herein. ('17 c. 187 § 5)

[3108—]6. **Existing laws**—All existing laws, not hereby expressly repealed, shall be construed in such a way as to effectuate and carry out the terms, conditions, spirit and purpose of this act, and to that end such laws shall be made to conform to and assist in carrying out this act. ('17 c. 187 § 7)

CHAPTER 16

INTOXICATING LIQUORS

LICENSES

3109. Sale, when and where forbidden—Penalty—Any person who shall sell any intoxicating liquors in quantities less than five gallons, or in any quantity, to be drunk upon the premises, in any city, village or borough, in the State of Minnesota, except as provided by law, or any person who shall sell any intoxicating liquors in any quantity in the State of Minnesota outside of the corporate limits of cities, villages or boroughs therein, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than fifty dollars, and the costs of prosecution, and by imprisonment in the county jail not less than thirty days. Provided, that the provisions of this act shall not prevent any person, firm or corporation, operating a bona fide brewery now in existence, located outside the corporate limits of an incorporated city, village or borough, in any county wherein the sale of intoxicating liquor is not prohibited by law, from selling at such brewery malt liquors, actually manufactured therein, in quantities of five gallons or over; and provided that nothing in this act shall in any way repeal, modify, or affect chapter 23, General Laws of Minnesota for 1915 [3161—1 to 3161—18], or any part thereof. (Amended '17 c. 32 § 1)

It is not contrary to the public policy of the state to give to cities of the first class power to prohibit the liquor traffic, and such power may be given to a city of the first class operating under a home rule charter (134-355, 159+792). Intoxicating Liquors, ¶10(1).

While this chapter governs municipalities operating under special charters, such municipalities are free to impose such other and additional restrictions as may lie within the power conferred upon them by their charters (134-355, 159+792). Intoxicating Liquors, ¶11.

Evidence held not to sustain a conviction for sale of intoxicating liquors without a license contrary to a city ordinance (124-124, 144+745). Intoxicating Liquors, ¶236(1).

Upon a trial for illegal sale of intoxicating liquor, the admission of express receipts to show shipments of liquor to defendant was not error (162+683). Intoxicating Liquors, ¶233(1).

On a trial under an indictment for the unlawful sale of intoxicating liquor, evidence of other sales at about the time of the sale mentioned in the indictment was admissible (162+683). Criminal Law, ¶2.

Where defendant denied that he furnished the liquor as charged refusal of an instruction that if he furnished the liquor in a spirit of hospitality he committed no crime was not error (132-4, 155+766). Criminal Law, ¶814(1).

Evidence held to support a conviction under this section (132-4, 155+766). Intoxicating Liquors, ¶236(11).

3114. Licenses by whom granted, etc.—No license to sell intoxicating liquor within this state shall be issued or granted, except in incorporated cities, villages and boroughs. Such license may be granted by the council of any such city, village or borough. Every such license shall be for one year from its date, unless sooner annulled, shall specify the room in which sales are allowed, and shall state that the person named is authorized to sell such liquor only in such place and at the time, in the manner, and to the persons allowed by law. (Amended '15 c. 147 § 1)

Constitutionality of this section as amended by 1915 c. 147, with respect to dispensing with the requirement of Const. art. 4 § 20, as to readings of the bill (see 130-424, 153+749; notes under Const. art. 4 §§ 20, 21, and G. S. 1913 §§ 41, 8414).

Mayor, authorized by ordinance to sign license, cannot impose conditions in license (121-348, 141+495). Intoxicating Liquors, ¶79.

What constitutes issuance of license (121-348, 141+495). Intoxicating Liquors, ¶80.

A license to sell liquor in a rural township, for a period of one year from May 8, 1915, issued pursuant to an order of the board of county commissioners, is void, though the order directing the issuance of such license was adopted by the board prior to the enactment of the amendment in 1915 (131-451, 155+216). Intoxicating Liquors, ¶45.

In view of this section, § 3117, referring to "the municipal authorities of any city, village, town or borough," does not make the town board a licensing board (126-505, 148+99). Intoxicating Liquors, ¶148.

3116. Bond—

131-136, 154+795, L. R. A. 1916E, 269; note under § 3117.

Action on bond is one on contract and not for a tort (121-450, 141+793, 47 L. R. A. [N. S.] 183). Action, ¶27(1).

Bond is for protection of all persons injured, and such persons may sue thereon in their own names, though the bond runs to the state (121-450, 141+793, 47 L. R. A. [N. S.] 183). Intoxicating Liquors, ¶88(2).

Under this section and the following section, suit upon a liquor dealer's bond for damages for the death of plaintiff's son killed by train while intoxicated may be brought without obtaining leave of court (162+1054). Intoxicating Liquors, ¶282.

3117. Same—

In action on liquor dealer's bond for death of plaintiff's adult son killed by train while intoxicated, held, that whether accident happened because of his intoxication, and whether his condition was partly due to liquor sold him in defendant's saloon while intoxicated, were for the jury (162+1054). Intoxicating Liquors, ¶316.

The reference in this section to "the municipal authorities of any city, village, town or borough" does not make the town board a licensing board, this being evident from a consideration of § 3114 (126-505, 148+99). Intoxicating Liquors, ¶148.

Action on bond is one on contract and survives death of licensee (121-450, 141+793, 47 L. R. A. [N. S.] 183). Abatement and Revival, ¶53.

The bond protects persons injured, and they may sue thereon in their own names, though the bond runs to the state (121-450, 141+793, 47 L. R. A. [N. S.] 183). Intoxicating Liquors, ¶88(2).

An action on the bond herein prescribed is governed by the six-year statute of limitations, though the act complained of constitutes an assault ordinarily governed by the two-year statute (131-136, 154+795, L. R. A. 1916E, 269). Limitation of Actions, ¶21(1).

Under this section both the principal and surety on a saloon keeper's bond are liable for any damage proximately caused by any act in violation of the conditions of the bond. Thus where one in charge of a saloon pours alcohol on a guest and sets fire to him, there is a violation of the condition that the licensee will keep a quiet and orderly house, and this, though the act does not constitute the statutory crime of keeping a "disorderly house" (131-136, 154+795, L. R. A. 1916E, 269). Intoxicating Liquors, ¶86(1), 87(1).

3122. Same—License, by whom granted—Bond—Record—Fees—

C. S. 1858 c. 18 § 14, and G. L. 1875 c. 112, cited—126-5, 147+660.

3128. Local option—

No particular form of ballot required (122-149, 142+15). Intoxicating Liquors, ¶34(5).

If a town votes upon the license question, and a village located within the town and not separated therefrom has not voted thereon as an independent municipality, the vote of the town determines the question for all of the territory of the town, including that within the village; but if the village itself as an independent municipality votes upon the question, the

vote of the village determines such question for the territory within the village regardless of the vote of the town (130-336, 153+602). Intoxicating Liquors, ¶40(2).

A sale of intoxicating liquor, by one licensed by the common council of a village during the period of his license, but after the town in which the village is located has voted "no license," is unlawful, where there has been no statutory separation of the village and the town, and both participate in the election (126-505, 148+99). Intoxicating Liquors, ¶148.

3129. Local option in certain villages—Election—

127-318, 149+472.

Marking ballots (122-149, 142+15). Intoxicating Liquors, ¶34(5).

Majority vote necessary to authorize issuance of licenses (122-149, 142+15). Intoxicating Liquors, ¶35.

The findings that four contestees were not resident electors of a village, that each voted unlawfully, and that each cast a vote in favor of license, held sustained by the evidence (126-298, 148+276). Intoxicating Liquors, ¶37.

C. S. 1858 c. 18 § 14, G. L. 1875 c. 112, and G. L. 1885 c. 145 § 48, cited—126-5, 147+660; 124-498, 145+383, 51 L. R. A. [N. S.] 40, Ann. Cas. 1915B, 812.

See 124-107, 144+464.

3130. Same—Licenses, when granted—

127-318, 149+472.

3131. Local option in cities of fourth class—Definitions—

Cited (126-5, 147+660).

3132. Same—Petition—Notice of election—

C. S. 1858 c. 18 § 14, and G. L. 1875 c. 112, cited—126-5, 147+660.

3133. Same—Election, etc.—

Cited (131-287, 155+92) on the proposition as to whether illegally marked ballots are to be counted in determining whether a majority of the votes cast have favored the measure submitted. Intoxicating Liquors, ¶35.

Where a majority of the votes cast upon the question, but not a majority of the whole number cast at the election, were in favor of the issuance of licenses, the proposition authorizing the issuance of licenses was adopted (127-318, 149+472). Intoxicating Liquors, ¶35.

C. S. 1858 c. 18 § 14, and G. L. 1875 c. 112, cited—126-5, 147+660.

3136. Soliciting orders, etc., in local option municipalities—

This act is not unconstitutional on the ground that its subject is not expressed in its title (126-68, 147+829). Statutes, ¶118(1).

3141. Sale, when forbidden—

125-425, 147+820; note under § 3152.

3142. Sale, where forbidden—

The provision of this section forbidding the sale of intoxicating liquors within one-half mile of a town or municipality which has voted no license is constitutional; but the one-half mile zone cannot embrace any territory within a village or city (126-5, 147+660). Intoxicating Liquors, ¶14, 40(2).

A majority of votes cast in favor of the question, as distinguished from the majority of the votes cast at the election, determines the question of the issuance of licenses (127-318, 149+472). Intoxicating Liquors, ¶35.

That a witness is a detective employed to detect violations of liquor laws does not make his testimony incredible as matter of law (135-98, 160+247). Criminal Law, ¶742(1).

A sale of intoxicating liquor by one licensed by the common council of a village during the period of his license, but after the town in which the village is located has voted "no license" is unlawful, where there has been no statutory separation of the village and the town, and both participate in the election (126-505, 148+99). Intoxicating Liquors, ¶148.

Vote of village as determining question of sale of liquor, irrespective of vote of town within which it is located (see 130-336, 153+602). Intoxicating Liquors, 40(2). See, also, note under § 3128, ante.

Cited (131-287, 155+92) on the proposition as to whether illegally marked ballots are to be counted in determining whether a majority of the votes cast have favored the measure submitted. Intoxicating Liquors, ¶35.

3148. Sale, to whom illegal—

In general—Evidence held to support a conviction under this section (124-408, 145+39). Intoxicating Liquors, ¶232.

Minors—A city ordinance, making it unlawful for a minor to frequent a saloon, is not in conflict with this section (126-521, 148+471). Intoxicating Liquors, ¶11.

To render a sale of liquor to a minor unlawful, notice forbidding such sale need not have been given (124-162, 144+752, Ann. Cas. 1915B, 377). Intoxicating Liquors, ¶159(1).

The proprietor of a saloon is liable to the penalty imposed for a sale to a minor, though the sale is made by the barkeeper without the knowledge or assent of the employer (124-162, 144+752, Ann. Cas. 1915B, 377). Intoxicating Liquors, ¶168.

Sufficiency of notice—"Boyce" and "Boise" are idem sonans, and the use of one of such names in a notice under this section and proof of the other is not a fatal variance (129-409, 152+775). Names, [§16\(2\)](#).

A notice under this section, served upon a bartender on duty, is sufficient, where it is thereafter seen and examined by defendant, the proprietor (129-409, 152+775). Intoxicating Liquors, [§161](#).

The notice need not show on its face that the person signing it is one of the persons authorized by this section to give the warning; it being sufficient that such fact be established at the trial (129-409, 152+775). Intoxicating Liquors, [§224](#).

Prostitutes—A woman to whom liquor is furnished, contrary to § 3148, is not an accomplice of the person selling the liquor (124-408, 145+39). Criminal Law, [§507\(1\)](#).

Evidence of issue of license—A record kept by the village clerk held competent, evidence of the issuance of a liquor license (128-45, 147+822). Intoxicating Liquors, [§234](#).

Competency of witnesses to testify as to intoxication of another—Persons who observe the appearance and actions of a purchaser of liquor were properly permitted to testify as to his intoxication (128-45, 147+822). Intoxicating Liquors, [§232](#).

3150. Licenses, how annulled—

Cited (126-5, 147+860).

Though refundment rests in discretion, and the right thereto is not an existing one, such right is assignable, and the assignee takes title to the money refunded immediately upon the entry of the order therefor, and the transfer is within the rule of equitable assignments (129-223, 152+265). Assignments, [§26](#).

3152. Revocation—

In proceedings under this section, the licensee is entitled to notice and an opportunity to be heard on the charges against him; but, if he appears and fails to object, he waives defect in the notice and in the form of the charges (125-425, 147+820). Intoxicating Liquors, [§108\(2, 4\)](#).

3153. License money, how applied—

The sureties on the bond of a county auditor are not liable for money paid to the auditor under this section, and converted by him, since the money is payable into the county treasury, and the auditor had no authority to receive the same, and such receipt was outside the scope of his official duties (133-274, 158+394). Counties, [§98\(1\)](#).

3155. Liability for acts of intoxicated person—

The act of a bartender in pouring alcohol on a guest and setting fire to him does not come within this section, where the bartender was not intoxicated (131-136, 154+795, L. R. A. 1916E, 269). Intoxicating Liquors, [§86](#), 87.

[COUNTY OPTION]

[3161—]1. **Definitions**—That in this act the word, "County" shall mean the particular county in which it is sought to secure prohibition pursuant to the terms hereof, the terms "Auditor," "County Board" and "Voters" shall refer respectively to the county auditor of said county, the county board thereof and the qualified voters therein; the terms "Intoxicating Liquor" and "Liquor," "sell" and "Sale" shall be given the same meaning respectively as is prescribed therefor in Section 3188 of the General Statutes of Minnesota for 1913, and the term "City," "Village," "Municipality," "Council," "Contestant" and "Contestee," the meaning prescribed therefor respectively in Section 299 of said General Statutes of Minnesota for 1913. ('15 c. 23 § 1)

[3161—]2. **Election to determine whether sale shall be prohibited**—**Petition**—That whenever there shall be presented to the county auditor of any county within this state a petition signed by any number of the qualified voters thereof, equal to or exceeding twenty-five (25) per cent of the total number of votes cast therein for governor at the last preceding general election, praying that a special election be held in said county to determine whether the sale of intoxicating liquors shall be prohibited therein, said auditor shall forthwith file such petition in his office, and thereafter keep and retain the same as a part of the records and files thereof, and said petition so presented and filed shall be prima facie evidence of the facts therein stated. Every such petition shall be substantially in the form hereinafter provided, and every such petitioner shall, opposite his signature thereto, specify his residence, giving the street and number, if any, and no voter shall sign his name to or withdraw his name from any such petition after the same has been so pre-

sented to the county auditor. Said petition shall also contain a written or printed oath to the effect that the petitioner is a legal voter of said county and knows the contents and purpose of said petition and signed the same of his own free will, and each petitioner shall at the time of signing be sworn as aforesaid. No signature shall be valid unless the date of the verification of the signer is less than ninety (90) days before the date of its presentation to the county auditor. Said petition when so presented may consist of separate petitions fastened together as one document, and containing in the aggregate the number of voters hereinbefore specified. ('15 c. 23 § 2)

This act does not violate Const. art. 4 § 36, and is valid (132-298, 156+249). Intoxicating Liquors, § 14.

[3161—]3. **Submission to voters—Duty of auditor—Election, when held**—The auditor shall upon the filing of said petition in his said office, forthwith make and file therein an order bearing his signature and his official seal directing the submission to the voters of said county of the question whether the sale of intoxicating liquors shall be prohibited therein, at a special election for such purpose, to be held on a Monday occurring not less than forty (40) days nor more than fifty (50) days after such filing of said petition; provided, however, that if said petition is presented to the auditor within sixty (60) days prior to any primary or general election in said county or any regular town or village election therein, then, and in such event, the election to be held hereunder upon the presentation of such petition shall be fixed for a Monday not less than thirty (30) days nor more than forty (40) days subsequent to said primary, general, or regular town or village election; provided that said election shall not be held on the same day as any other regular municipal election; and provided that the time during which the holding of such election may be postponed by any obstacle shall not be a part of the time within which the election is hereby required to be held and provided further that no election in any such county under the provisions of this act shall be ordered or held within three (3) years subsequent to a previous election hereunder in such county, unless such previous election shall have been set aside or adjudged invalid. ('15 c. 23 § 3)

[3161—]4. **Notice of election**—Said auditor shall immediately upon such filing of said petition and affidavits and his said order, make and file in his office a notice of such election, bearing his signature and official seal, and thereupon and at least twenty-five (25) days prior to the time fixed for the holding of said election serve a duplicate copy of said notice personally or by registered mail upon the clerk or recorder of each village, city or town within said county, and shall forthwith make and file in his office an affidavit showing the time and manner of such service, whereupon, each clerk or recorder shall at least fifteen (15) days before said election, cause to be posted in three conspicuous places, in each election district of his city, village, or town, a notice of said election, and one copy of each notice so posted together with proof of such posting thereof by affidavit of the person posting the same shall be forthwith filed by each said clerk and recorder in his respective office. Failure for any cause to give any of the notices herein required or to make or file proof thereof shall not be held to invalidate any election held hereunder. ('15 c. 23 § 4)

[3161—]5. **Judges and clerks of election**—The members of the town board shall be judges of such election in the election district in which they respectively reside unless all are of like belief, either in favor of prohibiting the sale of intoxicating liquors in said county, or against the prohibition thereof in which case not more than two, determined by lot unless otherwise agreed upon, shall act as judges. But no member of such board shall be compelled to serve as judge, and if any decline they shall notify the town board in time to fill the place by appointment.

The council of every municipality at least ten (10) days before such election, shall appoint to be judges thereof three (3) qualified voters of each district therein, at least one (1) of whom shall be known to be in favor of pro-

hibiting the sale of intoxicating liquors in said county, and one (1) shall be known to be against prohibiting such sale. But in villages having but one (1) district and not included in any town district, the members of the council shall be judges, subject to the qualifications and restrictions provided for town boards in like cases.

The judges of each district shall appoint two (2) qualified voters therein as clerks except that in towns, the town clerk, and in villages having but one (1) district and not included in any town district, the village clerk or recorder shall serve as one (1) of the clerks in the district where he resides. No more than two (2) judges and one (1) clerk, in any district shall be of like belief, either in favor of prohibiting the sale of intoxicating liquors in said county or against prohibiting such sale, and no person shall be eligible as judge or clerk unless he can read, write and speak the English language understandingly. And no additional judge or clerks to be known as ballot judge or clerks shall be appointed. Whenever for any reason it becomes necessary to appoint one or more judges in order to provide three judges for each election district, the town board or council shall at least five (5) days before the time fixed for the holding of said election appoint the number required. Vacancies in the office of judge or clerk by reason of failure to appear at the time and place of said election or otherwise shall be filled as provided by law for general elections in this state, subject to the qualifications and restrictions hereinbefore prescribed. ('15 c. 23 § 5)

[3161—]6. **Challengers**—The judges shall allow one (1) voter, known to be in favor of prohibiting the sale of intoxicating liquors in such county and one (1) known to be against prohibiting such sale, to be in the room where the election is held, to act as challengers of voters. Such challengers shall be subject to the provisions of law relating to challengers in case of general elections. ('15 c. 23 § 6)

[3161—]7. **Ballots**—The ballots for said election shall be printed in the following form, words and characters:

Shall the sale of liquor be prohibited?

.....	Yes	:
.....	No	:

The voter shall mark a cross in one (1) of the above squares to express his choice. Such ballot shall take the place of the official ballot required for general elections and, together with a sufficient number of blank forms for lists and affidavits, and such other blanks as are required in preparing for and conducting such election, shall be prepared under the direction of the county auditor and with such forms and blanks by him delivered to the proper clerks or boards in sufficient quantities and in time to enable them to comply with the provisions of this act, all as provided by law in case of general elections for county officers. ('15 c. 23 § 7)

Cited in dissenting opinion (131-287, 155+92).

The sufficiency of the markings on various ballots in an election under this section considered and determined in the light of G. S. § 491 (see 131-303, 155+97). Intoxicating Liquors, 35.

[3161—]8. **Conduct of elections**—In all elections hereunder, except as to matters herein otherwise provided for, all provisions of law governing general elections for county officers in this state, including penal provisions and provisions relating to compensation of officials, and to payment of expenses incurred in preparing for and conducting elections, shall apply and govern as far as applicable. Provided that the compensation of the members of the county canvassing board shall be the same as the compensation of the members of the county canvassing board provided for by said election laws. The ballots shall be given to electors, marked, cast, counted, canvassed, returned and preserved, and returns made and delivered to the auditor, all substantially in accordance with the law governing general elections for county officers.

It shall not be necessary to make new election districts or to make any new register of voters for any election held pursuant to this act prior thereto, but the judges of such election in each district shall take from the custodian thereof and use at such election the register of voters used in said district at the general election next preceding said election so as to be held as herein provided. If any person shall offer to vote in any such districts whose name does not appear on such registration list, his name shall be entered thereon upon his taking such oath, answering such questions, and complying with such other provisions as shall be required by the then existing laws regulating the registration of voters. After his name is so entered and before he receives the ballot, the judges shall administer the following oath:

"You do swear that you are a citizen of the United States; that you are twenty-one years of age, and have been a resident of this state for six months immediately preceding this election; that you are a qualified voter in this district; and that you have not voted at this election."

Upon taking this oath if the judges are satisfied he is a qualified voter, he shall be allowed to vote. If such person refuses to take this oath, he shall not be allowed to vote and his name shall be removed from the register. ('15 c. 23 § 8)

[3161]—9. County Canvassing Board—The auditor, the chairman of the county board, and two qualified electors of the county, appointed by the auditor, one (1) known to be in favor of prohibiting the sale of intoxicating liquors, in said county, and one (1) known to be against prohibiting such sale, shall constitute the county canvassing board, any three of whom at least one being known to be in favor of prohibiting and one being known to be against prohibiting such sale, being present and sworn shall have power to act; and it shall be the duty of the auditor to appoint electors willing to act on said canvassing board as soon as practicable and within five (5) days after the day of said election. Such board, as soon as practicable and within ten (10) days after said election, shall meet at the auditor's office and there publicly canvass the returns made to said auditor. Such canvass shall, forthwith and within fifteen (15) days after said election, be completed and thereupon said board shall certify in writing the result of said canvass, and forthwith file their certificate thereof, duly signed by the members of the board so acting, with the county auditor of said county. ('15 c. 23 § 9)

[3161]—10. Contests—Mandamus—Any voter may contest the validity of such election, as provided by sections 529, 530 and 531 of the General Statutes of Minnesota for 1913, provided that it shall be the duty of the county attorney of such county to appear in defense of the validity of such election in any such contest in his county; and provided further that any voter of said county may appear at any time before trial and defend as contestee therein by serving written notice of his appearance signed by himself or his attorney on the contestant or his attorney, as provided by law, for the service of answers in civil actions. A writ of mandamus shall issue on information of any legal voter of said county to compel the performance of any duty enjoined upon any officer by this act, and all the provisions of Chapter 87, of the General Statutes of Minnesota for 1913 relating to mandamus proceedings shall apply to any proceedings hereunder as far as the same may be applicable. ('15 c. 23 § 10)

[3161]—11. Effect of prohibition—Suspension of existing laws—Another election—If a majority of the votes at any such election be cast in favor of prohibiting the sale of intoxicating liquors then, and in that event, and not otherwise, from and after the time of the filing of the certificate of the county canvassing board, as herein prescribed, the operation and enforcement of every statute and of every municipal charter now existing or hereafter enacted or adopted, so far as the same shall make the granting of licenses for the sale of intoxicating liquors or the sale or other disposition thereof, optional with the voters of towns, villages or cities, or any thereof, or in any manner au-

thorize or relate to the granting or issuance of any such license shall become and be wholly suspended in said county, and in each town, village and city therein, and the selling or storing or having in possession for sale or soliciting, receiving or taking any orders for, intoxicating liquors in any quantity whatsoever, and the keeping of any place, structure or vehicle, transient or permanent, where such liquor shall be sold or stored or kept for sale, in any quantity whatever, in any place in such county, shall be illegal and prohibited except as hereinafter otherwise expressly provided and except further that licensees may sell intoxicating liquors until such time as their licenses shall be annulled under the provisions of this act. And six (6) months from and after the time of the filing of the certificate of the county canvassing board, as herein prescribed, the operation and enforcement, within said county, and in each said town, village and city therein, of every statute, municipal charter and ordinance, now existing or hereafter enacted or adopted, so far as the same shall relate to the sale of intoxicating liquor by licensees or the conduct or regulation of licensed public drinking places shall likewise become and be suspended. Each such suspension of the operation and enforcement of every such statute, charter and ordinance, and such prohibition shall continue until another election hereunder shall be held in said county, at which the majority of the votes cast shall be against prohibiting the sale of intoxicating liquors therein, whereupon such suspension and such prohibition shall cease, and all of the then existing statutes, municipal charters and ordinances be thereafter operative and enforceable within said county until the operation thereof shall be again suspended and such prohibition again put in force, under and pursuant to the terms of this act; provided, however, that no suspension of the operation or enforcement of any statute, charter or ordinance under this act shall in any manner prevent or affect the prosecution or enforcement of any offense committed or any penalty incurred at a time prior to such suspension or when same was not in force. ('15 c. 23 § 11)

132-290, 156+125.

Where a county votes to prohibit liquor under this act, the power of all municipalities within the county, including cities operating under home rule charters, to issue licenses for the sale of liquor, is withdrawn (132-298, 156+249). Intoxicating Liquors, §40(2).

Where a vote to prohibit the sale of liquors was taken August 2, 1915, and the certificate of the canvassing board was filed August 9, a license issued July 30, 1915, for a term of one year beginning September 1, 1915, was inoperative, and a sale on October 1, 1915, under the license, was unlawful (132-470, 156+251). Intoxicating Liquors, §40(3).

In determining the total number of votes cast at the election defectively marked ballots, as well as those properly marked, must be counted (131-287, 155+92; 131-303, 155+97). Intoxicating Liquors, §35.

[3161—]12. **Annulment of licenses—Refundment of fees**—During the period of such prohibition and the suspension of the statutes and municipal charters first mentioned in the last preceding section, it shall be unlawful for any licensing board or council within said county to grant any license for the sale of intoxicating liquors therein. Every such license attempted to be granted in said county during such period of suspension or prohibition shall be null and void. And all licenses for the sale of intoxicating liquors granted in said county after the passage of this act for a term which shall not have expired, shall six (6) months from and after such suspension of the statutes or charter pursuant to which the same was granted forthwith be annulled and the holder thereof be liable for the sale of any liquor made by him thereafter the same as though no license had ever been issued to him. The county or municipality issuing such license shall refund to the holder thereof the portion of the fees received and retained by it for such license corresponding to the unexpired term thereof, which shall thereupon be charged in its due proportion to the fund or funds to which it shall have previously been credited, appropriated or applied. ('15 c. 23 § 12)

Adoption of county option by a county by the prohibition of the sale of liquor therein is operative on licenses issued in cities operating under home rule charters (132-298, 156+249). Intoxicating Liquors, §40(1).

[3161—]13. **Penalties and prosecutions**—(A) Every person, company, corporation, club, association or society, directly or indirectly, either person-

ally or by clerk, agent or employee, who shall sell or store or have in possession for sale, or shall solicit, receive or take any orders for intoxicating liquor, in any quantity whatever, or who shall keep any place, structure or vehicle, transient or permanent, where any such liquor shall be sold or stored, or kept for sale, in any quantity whatever, in any county wherein the operation or enforcement of statutes, charters or ordinances shall be suspended or such prohibition be in force, as in this act provided, in violation of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty (50) dollars and the cost of prosecution and be imprisoned in the county jail for not less than thirty (30) days, provided that the foregoing provisions in this section contained shall not apply to the keeper of any licensed drinking place until his license shall be annulled as hereinbefore prescribed, provided also that intoxicating liquor, manufactured in said county may be lawfully kept or stored at the place or places of such manufacture or any place in said county where necessary in due course of transportation from the place of manufacture, and provided further that any duly licensed and practicing physician or veterinarian may prescribe or any duly licensed pharmacist actually carrying on business as such may in good faith as such druggists or pharmacists dispense, or keep for the purpose of dispensing, intoxicating liquor under the conditions and restrictions and subject to the penalties prescribed in such cases by Chapter 16, of the General Statutes of Minnesota for 1913, and acts amendatory thereof.

(b) Whoever in making any affidavit accompanying the petition mentioned in section 1 of this act [3161—1], shall knowingly, willfully and corruptly swear falsely thereto, shall be deemed guilty of perjury and on conviction thereof be punished accordingly. Whoever forges the signature of any person upon any such petition shall be guilty of forgery and on conviction thereof be punished accordingly. Any person, who, not being at the time a qualified voter of the county, shall with unlawful intent sign such petition or vote at any election held hereunder and any person who shall induce another, knowing that he is not a qualified voter of said county, to sign such petition or vote at such election, or who shall directly or indirectly present or cause to be presented to the auditor any such petition, knowing or having reason to believe that any signer thereof is not a qualified voter, shall be guilty of a gross misdemeanor. And any public officer or judge or clerk of election who shall willfully fail, neglect or refuse to perform any duty imposed by this act, shall be guilty of a gross misdemeanor. ('15 c. 23 § 13)

Cited (135-387, 160+1015).

The penalties of this section are directed against the seller and not against the buyer; and one who purchases intoxicating liquor in a dry county at the solicitation of another, and with his money and for his use and as his agent, in good faith, and not as a subterfuge or for purposes of evasion, does not commit an offense (135-214, 160+673). Intoxicating Liquors, ~~6~~169.

[3161—]14. **Evidence—Complaints, informations and indictments**—The certificate of the county canvassing board, filed as in this act provided, or a duly certified copy thereof, shall be prima facie evidence in all courts of this state of the facts therein set forth and that said election was petitioned for, ordered, held and conducted, all as provided by law. In any complaint, information or indictment for the violation of any of the provisions of this act, it shall not be necessary to set forth the facts showing that the required number of voters in the county petitioned for the election or that the election was held or that a majority voted in favor of prohibiting the sale of intoxicating liquor as herein provided; but it shall be sufficient to allege that the act complained of was then and there prohibited and unlawful. ('15 c. 23 § 14)

[3161—]15. **Duty of officers**—Every sheriff, constable, marshal and policeman shall summarily arrest any person found violating any provisions of this act, and the president or mayor of every municipality shall make complaint of every known violation thereof. And every county attorney shall prosecute all cases arising under this act within his county. ('15 c. 23 § 15)

[3161—]16. **Other statutes**—Except as herein provided, all statutes and municipal charters and ordinances operative within the county shall be and remain in full force and effect, so far as the same in any way relate to intoxicating liquors, and keeping of unlicensed drinking places, or the sale or disposition of such liquors to any person or class of persons whomsoever or any penalty or liability therefor. ('15 c. 23 § 16)

[3161—]17. **Construction**—This act shall be liberally construed to effectuate the purpose of its enactment. ('15 c. 23 § 17)

[3161—]18. **Forms**—The petition for election provided for in this act, the order for such election, the notice thereof, to be made and filed by the auditor and thereupon served upon the clerk or recorder, and notice of such election to be prepared and posted by such clerk or recorder, and the certificate of the county canvassing board of the returns thereof, may be in the following forms, respectively.

FORM OF SAID PETITION

“To the Auditor of County, Minnesota:

“The undersigned legal voters of said county pray that an election be held in the said county to determine whether the sale of intoxicating liquor shall be prohibited therein, and we and each of us do solemnly swear (or affirm) that we are legal voters of said county and know the contents and purpose of this petition, and signed the same of our own free will.”

Name of Signer	In Cities		Residence
	St.	No.	

FORM OF SAID ORDER

“State of Minnesota }
County of }

“A petition having been filed with the undersigned auditor of said county, signed by a number of qualified electors of said county equal to more than twenty-five (25) per cent of the total number of votes cast in said county for Governor at the last preceding general election, praying that an election be held in the said county to determine whether the sale of intoxicating liquors shall be prohibited therein.

It is hereby ordered, That a special election for such purpose be held in the various election districts in said county on the day ofand that notice thereof be given as provided by law.

Dated the day of19..

.....
County Auditor.”

FORM OF SAID AUDITOR'S NOTICE

“To the (Clerk or Recorder) of the (Town, village or city) of in County, Minnesota.

You are hereby notified, That a special election will be held in the several election districts in County on the day of 19.... for the purpose of voting upon the question whether the sale of intoxicating liquors shall be prohibited within said county.

.....
County Auditor.”

FORM OF SAID NOTICE TO BE POSTED

"Election Notice"

"To the legal Voters of the (Town, village or city) of in the County of Minnesota.

Notice is hereby given, That a special election will be held at (insert location of polling place) (Insert "In the town of" or "In the village of" or "In the election district in ward of the city of" as may be required) in said county, between the hours of o'clock in the forenoon and o'clock in the afternoon on the day of for the purpose of voting upon the question whether the sale of intoxicating liquors shall be prohibited within county.

.....
Clerk (or recorder)"

FORM OF SAID CERTIFICATE

"State of Minnesota }
County of }

We, the undersigned, constituting the Board of Canvassers for said county, do hereby certify that we find and have so determined that, at the special election held in said county on the day of 19.... on the question whether the sale of intoxicating liquors should be prohibited in said county..... votes were cast in favor of prohibiting such sale and votes were cast against prohibiting such sale, and that a majority of votes at said election was (in favor of or against according to the fact prohibiting such sale, or that the result of said election was a tie, if such was the fact).

Dated this day of 19....

.....
.....
.....
.....

('15 c. 23 § 18)

County Canvassers."

PUBLIC DRINKING PLACES

3164. To be kept closed, when—

125-425, 147+820; note under § 3152.

3172. Search warrant—

The proceeding under this section is criminal in character, as against the person accused, and quasi criminal and in rem as against the liquor and appurtenances used in connection with the sale thereof (123-333, 143+907). Action, ~~§~~18; Intoxicating Liquors, ~~§~~244.

Where a complaint in action against an officer seizing intoxicating liquors under this section does not allege that the property was wrongfully taken, question of a wrongful taking is not in issue (123-333, 143+907). Sheriffs and Constables, ~~§~~168(6).

Property seized under this section is in the custody of the law, and the possession of the officer cannot be disturbed until the proceedings are terminated, and an order of the court disposing of the property is made and served upon the officer, or in some way brought to his official attention. Until such order is made, neither action for possession nor for the loss of the property by the negligence of the officer can be maintained by the owner (123-333, 143+907). Intoxicating Liquors, ~~§~~255, 256.

3173. Liquors, etc., how disposed of—

If the person accused be found guilty, the liquors are to be destroyed, and the other property forfeited to the use of the school fund. But if he is acquitted, an order to restore the property should be made, unless perhaps, the person accused is not an owner thereof, and his acquittal was on the ground that he was not the proprietor of the unlicensed drinking place. The failure of the court to make an order of restitution upon an acquittal of defendant does not render the officer a wrongdoer, or entitle any person, whether the owner of the property or not, to disturb the officer in his official possession (123-333, 143+907). Intoxicating Liquors, ~~§~~255, 256.

PENALTIES AND PROSECUTIONS

3179. Giving, procuring, or purchasing for minors, etc.—

Cited (135-214, 160+673).

3188. Construction of terms—

Cited (135-214, 160+673).

The definitions given in this section are sufficiently clear and complete that they may be given to the jury without further explanation (132-4, 155+766). Intoxicating Liquors, § 239(10).

3191. Sale by employee—

126-45, 147+822.

This section is not unconstitutional, as special legislation (124-162, 144+752, Ann. Cas. 1915B, 377). Statutes, § 76(5).

The proprietor of a saloon is liable to the penalty for a sale to a minor, though the sale was made by his barkeeper without his knowledge or assent (124-162, 144+752, Ann. Cas. 1915B, 377). Intoxicating Liquors, § 168.

The proprietor of a saloon is liable for any sale of liquor to a habitual drunkard, made either by himself or any of his bartenders, after he receives the notice provided for by § 3148 (129-409, 152+775). Intoxicating Liquors, § 161.

3199. Securing evidence—Immunity of witness—

This section gives no immunity to the witness from a prosecution for a crime which may be established by independent evidence (126-521, 148+471). Criminal Law, § 42.

CIVIL ACTIONS

3200. Action for injuries caused by intoxication—

The bond required by §§ 3116, 3117, though running to the state, is for the protection of all persons damaged, and they may sue thereon in their own names (121-450, 141+793, 47 L. R. A. [N. S.] 183). Intoxicating Liquors, § 88(2).

Cause of action for breach of bond survives death of licensee (121-450, 141+793, 47 L. R. A. [N. S.] 183). Abatement and Revival, § 53.

Unchallenged instructions, held to be regarded as the law of the case on appeal (121-455, 141+803). Appeal and Error, § 853.

This section has no application to the act of a bartender in pouring alcohol on a guest and setting fire to him, where such bartender was not at the time intoxicated (131-136, 154+795, L. R. A. 1916E, 269). Intoxicating Liquors, § 86, 87.

CHAPTER 16A

CIGARETTES

3202. Penalty for violation—Any person violating the provisions of section 1 of this chapter shall be guilty of a misdemeanor, and upon first conviction for such violation shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars or imprisonment in the county jail for not less than fifteen days, nor more than sixty days; and upon second conviction for violation of any of said provisions shall be punished by imprisonment in the county jail for not less than thirty days, nor more than ninety days, and his license shall then be terminated as hereinafter provided. (Amended '17 c. 245 § 1)

CHAPTER 16AA

[BOXING AND SPARRING]

[3213—]1. **State athletic commission**—There shall hereafter be a state athletic commission. Within thirty days after this act takes effect, the governor shall appoint three persons, who shall be citizens of this state, to be members of such commission, who shall hold office for the term of three years from the first day of June following the date of their appointment. The governor shall also appoint their successors, possessing like qualifications, on the first day of June of each successive third year, beginning with the year nineteen hundred and fifteen. The commission shall maintain general offices for the transaction of its business. The members of the commission shall, at their first meeting after their appointment, elect one of their number chairman of the commission, shall adopt a seal for the commission and may make such rules for the administration of their office, not inconsistent herewith, as they may deem expedient; and they may hereafter amend or abrogate such rules. Two of the members of the commission shall constitute a quorum to do business; and the concurrence of at least two commissioners shall be necessary to render a choice or decision by the commission. ('15 c. 363 § 1)

[3213—]2. **Secretary—Powers and duties—Biennial report**—The commission shall appoint, and at pleasure remove a secretary to the commission, whose duty it shall be to keep a full and true record of all its proceedings, preserve at its general office all its books, documents and papers, prepare for service such notices and other papers as may be required of him by the commission and to perform such other duties as the commission may prescribe; and he may, under the direction of the commission, issue subpoenas for the attendance of witnesses before the commission with the same effect as if they were issued in an action in the district court and may, under direction of the commission, administer oaths in all matters pertaining to the duties of his office or connected with the administration of the affairs of the commission. Disobedience of such a subpoena and false swearing before such secretary shall be attended by the same consequences and be subject to the same penalties as if such disobedience or false swearing occurred in an action in the district court. The commission shall bi-ennially make to the legislature a full report of its proceedings for the year ending with the first day of the preceding December and may submit, with such report, such recommendations pertaining to its affairs as to it shall seem desirable. ('15 c. 363 § 2)

[3213—]3. **Powers of commission—Licenses for boxing and sparring matches**—The commission shall have, and hereby is vested with, the sole direction, management, and control of and jurisdiction over all boxing and sparring matches and exhibitions to be conducted, held or given within the state, pursuant to its authority and in accordance with the provisions of this act. The commission may, in its discretion issue and at its pleasure revoke, a license to conduct, hold or give boxing and sparring matches and exhibitions to any club, corporation or association within the state. Every license shall be subject to such rules and regulations, and amendments thereof, as the commission may prescribe. Every application for a license as herein provided for, shall be in writing and shall be addressed to the commission, and shall be verified by some officer of the club, corporation or association on whose behalf the application may be made. It shall contain a recital of such facts as, under the provisions hereof, will show the applicant entitled to receive a license and, in addition thereto, such other facts and recitals as the commission may by rule require to be shown. The commission at its discretion may issue or revoke a license to hold or conduct such exhibitions or contests, to any incorporated club or association; also said commission shall have the power to draw up such rules and regulations as they may from time to time find necessary for the proper staging of such exhibitions or contests. No license shall be issued to non-residents. No boxer weighing less than 140 lbs.

shall be permitted to contest against an opponent weighing more than 10 lbs. more than himself. ('15 c. 363 § 3)

[3213—]4. Buildings in which contests are to be given, etc.—All buildings or structures used, or intended to be used, for the purpose of this act must be inclosed, and shall not be connected with any door or passage ways with any saloon or place where intoxicating liquors are sold and disposed of, nor shall any intoxicating liquors be dispensed or given away upon the premises, during the time of any such athletic entertainment, also no boxing contest to be permitted on Sunday, nor shall any wagering be permitted upon the results of matches or exhibitions. All buildings or structures shall be properly ventilated and provided with fire exits and fire escapes, if there need be, and in all manner conform to the laws, ordinances and regulations pertaining to buildings in the city, town or village where situated. Where a part of a building or structure is used for the purpose set forth in this act, this section shall apply in the same manner. ('15 c. 363 § 4)

[3213—]5. Number of rounds—Gloves—No boxing or sparring match or exhibition shall be of more than ten rounds in duration; and the contestants shall wear, during such contests, gloves of not less than the following weights, to-wit: In exhibitions or contests between boxers up to 140 lbs. five ounces, from 140 lbs. to 175 lbs. of not less than six ounces, over 175 lbs. of not less than eight ounces. ('15 c. 363 § 5)

[3213—]6. Forfeiture of license—Any club, corporation, or association which may conduct, hold or give, or participate in, any sham or fake boxing or sparring match or exhibition shall thereby forfeit its license issued in accordance with the provisions of this act, which shall thereupon be, by the commission cancelled and declared void; and it shall not thereafter be entitled to receive another such or any license pursuant to the provisions of this act. ('15 c. 363 § 6)

[3213—]7. Penalizing contestants—Any contestant who shall participate in any sham or fake boxing or sparring match or exhibition shall be penalized in the following manner: For the first offense, he shall be restrained for a period of six months, such period to begin immediately after the occurrence of the offense, from participating in any boxing competition to be held or given by any club, corporation or association duly licensed to give or hold such boxing or sparring match or exhibition; for a second offense, he shall be totally disqualified from further admission or participation in any boxing contest held or given by any club, corporation or association duly licensed for said purposes. ('15 c. 363 § 7)

[3213—]8. Clubs, etc., to report to commission—Tax on receipts—Moneys, how disposed of—Bond of licensee—Every club, corporation or association which may hold or exercise any of the privileges conferred by this act shall, within twenty-four hours after the determination of every contest, furnish to the commission a written report, duly verified by one of its officers, showing the number of tickets sold for each contest and the amount of the gross proceeds thereof, and such other matters as the commission may prescribe, and shall also within the said time, pay to the state treasurer, a tax of ten per cent of its total gross receipts from the sale of tickets of admission to such boxing or sparring match or exhibition. All moneys paid into the state treasury shall be credited to a fund to be used by the advisory commission of the Minnesota (State) Sanatorium for Consumptives for the purposes set forth in Section 14 of Chapter 583 General Laws 1913. Before any license shall be granted to any club, corporation or association to conduct, hold or give any boxing or sparring match or exhibition, such applicant therefor shall execute and file with the state auditor a bond in the sum of five thousand dollars to be approved as to form and the sufficiency of the sureties thereon, by the state auditor, conditioned for the payment of the tax hereby imposed. Upon the filing and approval of such bond, the state auditor shall issue to such applicant for such license a certificate of such filing and approval, which shall be by such applicant filed in the office of the commission with its appli-

cation for such license; and no such license shall be issued until such certificate shall be so filed. ('15 c. 363 § 8)

[3213—]9. **Powers of state auditor—Examination of books, etc.—Penalty for failure to pay tax—Act applicable only to cities of first class**—Whenever any club, corporation or association shall fail to make a report of any contest at the time prescribed by this act, or whenever such report is unsatisfactory to the state auditor, he may examine or cause to be examined, the books and records of such club, corporation or association, and subpoena and examine under oath its officers and other persons as witnesses for the purpose of determining the total amount of its gross receipts for any contest and the amount of the tax due pursuant to the provisions of this act, which tax he may upon and as the result of such examination, fix and determine. In case of the default in the payment of any tax so ascertained to be due, together with the expenses incurred in making such examination, for a period of twenty days after notice to such delinquent club, corporation or association of the amount at which the same may be fixed by the state auditor, such delinquent shall, ipso facto, forfeit its license and shall be thereby disqualified from receiving any new license or any renewal of license; and it shall in addition, forfeit to the State of Minnesota, the sum of five hundred dollars, which may be recovered by the attorney general in the name of the State of Minnesota, in the same manner as other penalties are by law recovered. Provided, however that the provisions of this act shall only apply to cities of the first class. The athletic commission herein provided for shall not have authority to grant licenses for or permit more than twelve boxing exhibitions in any such city during any one year. ('15 c. 363 § 9)

[3213—]10. **Penalty for violation**—Any person who violates any of the provisions of this act, for which a penalty is not herein expressly described, shall be guilty of a misdemeanor. ('15 c. 363 § 10)

CHAPTER 17

ILLEGITIMATE CHILDREN

By § 1, "Chapter 17, General Statutes 1913, is hereby amended so as to read as follows: Chapter 17.—Illegitimate Children," and as set forth in the sections therein and herein numbered 3214 to 3225(e).

By § 3 this act takes effect January 1, 1918.

3214. **Complaint—Warrant**—On complaint being made to a justice of the peace or municipal court by any woman who is delivered of an illegitimate child, or pregnant with a child which, if born alive, might be illegitimate, accusing any person of being the father of such child, the justice or clerk of the court shall take the complaint in writing, under her oath, and thereupon shall issue a warrant, directed to the sheriff or any constable of the county commanding him forthwith to bring such accused person before such justice or court to answer such complaint; which warrant may be executed anywhere within the state. (Amended '17 c. 210 § 1)

3215. **Action, how entered—Proceedings**—The justice shall enter an action in his docket, or the clerk of court in his register of actions, in which the state shall be plaintiff and the accused defendant, and shall make such other entries as are required in criminal actions. On the return of the warrant with the accused, the justice or judge shall examine under oath the complainant, and such other witnesses as may be produced by the parties, respecting the complaint, and shall reduce such examination to writing. He may at his discretion, and at the request of either party shall, exclude the general public from attendance at such examination. (Amended '17 c. 210 § 1)

3216. **Recognizance to appear—Commitment**—If there is probable cause to believe the defendant guilty as charged in the complaint, the justice or judge shall require him to enter into a recognizance, with approved sureties,

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in a sum not less than one hundred dollars nor more than five hundred dollars, to appear before the district court of the proper county at the next term thereof, or if such court is then sitting in the county, at a date fixed by the justice or judge, and answer said complaint and abide the order of such court thereon. If he fails to give such recognizance, the justice or judge shall commit him to the county jail, there to be held to answer such complaint at the next term of such court, or at the date so fixed. Thereupon the justice or judge shall certify the examination, and return the same and all process and papers in the case to the clerk of such court. (Amended '17 c. 210 § 1).

3217. Proceedings in district court—At the next term of said court, or at the date fixed by the justice or judge, if the complainant has not been delivered or is not able to attend, or for any other sufficient reason, the court may continue the cause, and such continuance shall renew the recognizance, which shall remain in force until final judgment. If the sureties shall at any term of court surrender the defendant and ask to be discharged, or if the court shall at any time deem it proper, it may order a new recognizance to be taken, and commit the defendant until it is given. (Amended '17 c. 210 § 1)

3218. Trial—Judgment and proceedings to enforce—Upon the trial the examination taken before the justice or judge of the municipal court shall in all cases be read to the jury when demanded by the defendant. If he is found guilty, or admits the truth of the accusation, he shall be adjudged to be the father of such child and thenceforth shall be subject to all the obligations for the care, maintenance and education of such child, and to all the penalties for failure to perform the same, which are or shall be imposed by law upon the father of a legitimate child of like age and capacity. Judgment shall also be entered against him for all expenses incurred by the county for the lying-in and support of and attendance upon the mother during her sickness, and for the care and support of such child prior to said judgment of paternity, the amount of which expenses, if any, shall also be found by the jury if they return a verdict of guilty; together with the costs of prosecution. If the defendant fails to pay the amount of such money judgment forthwith, or during such stay of execution as may be granted by the court, he shall be committed to the county jail, there to remain until he pays the same or is discharged according to law; provided, however, that no stay shall be granted unless the defendant shall give a bond to the county, in such sum and with such sureties as shall be approved by the court, for the payment of such money judgment on or before the expiration of such stay. (Amended '17 c. 210 § 1)

Evidence of guilt (see 130-206, 153-526).

The five-sixths jury law (§ 7805, post) is applicable to proceedings under this act (135-65, 160-189). Jury, ~~§~~32(4).

3219. Action by mother against father—In the event of judgment of paternity as provided in section 3218 the mother shall be entitled to recover of the father in a civil action all expense necessarily incurred by her in connection with her confinement, including her suitable maintenance for not more than eight weeks next prior thereto and not more than eight weeks thereafter; and for the burial of the child if the same shall have been still born or shall have died after birth. (Amended '17 c. 210 § 1)

3220. Petition for discharge—Notice—Any person who has been imprisoned ninety days for failure to pay any such money judgment may apply to said court, by petition setting forth his inability to pay the same, and praying to be discharged from imprisonment, and shall attach to such petition a verified statement of all his property, money and effects whether exempt from execution or otherwise. Thereupon the court shall appoint a time and place for hearing said application, of which the petitioner shall give at least ten days' notice to the county attorney. (Amended '17 c. 210 § 1)

3221. Hearing—Discharge—At the hearing the defendant shall be examined on oath in reference to the facts set forth in such petition and his ability to pay such money judgment, and any other legal evidence in reference to such matters may be produced by any of the parties interested. If it

appears that the defendant is unable to pay such judgment, the court may direct his discharge from custody, upon his making affidavit that he has not in his own name any property, real or personal, and has no such property conveyed or concealed, or in any manner disposed of with design to secure the same to his use or to avoid in any manner payment of such judgment. If upon such hearing it appears that the defendant has property, but not sufficient to pay such judgment, the court may make such order concerning the same, in connection with such discharge as justice may require. The defendant's discharge as aforesaid shall not affect the right of the county to collect upon execution any portion of such judgment remaining at any time unsatisfied, subject to all the provisions of law relating to judgments for the payment of money. (Amended '17 c. 210 § 1)

3222. Complaint by others than mother—If a woman is delivered of an illegitimate child, or is pregnant with a child likely to be illegitimate when born, the county board of the county where she resides, or any member thereof, or the state board of control or any person duly appointed to perform in said county any of the duties of said board relating to the welfare of children, may apply by complaint to a justice of the peace of the county or to a municipal court to inquire into the facts and circumstances of the case. (Amended '17 c. 210 § 1)

3223. Procedure—Warrant—Such justice or the judge of the municipal court may summon the woman to appear before him, and may examine her on oath respecting the father of such child, the time when and place where it was begotten, and any other facts he deems necessary for the discovery of the truth, and thereupon shall issue his warrant to apprehend the putative father. Thereafter the proceedings shall be the same as if the complaint had been made by such woman under the provisions of this chapter, and with like effect, and in all cases the complainant and the accused may require the attendance of such woman as a witness. (Amended '17 c. 210 § 1)

3224. Compromise by board—The county board, either before or after judgment, may make such compromise and settlement with the putative father of any illegitimate child, as they deem equitable and just, for expenses incurred by the county for which judgment may be or shall have been entered pursuant to section 3218. (Amended '17 c. 210 § 1)

3225 (a). Settlement by father—The state board of control or the duly appointed guardian of the person of an illegitimate child shall have authority to accept from the duly adjudged or acknowledged father of the child such sum as shall be approved by the court having jurisdiction of proceedings to establish the paternity of the child, in full settlement of all obligations for the care, maintenance and education of such child; and shall hold or dispose of the same as ordered by said court. Such settlement shall discharge the father of all further liability, civil and criminal, on account of such child; provided that such settlement shall not affect any liability of the father under section 3219. ('17 c. 210 § 1)

3225 (b). Clerk to report name of adjudged father—Upon the entry of a judgment determining the paternity of an illegitimate child the clerk of the district court shall notify in writing the state registrar of vital statistics of the name of the person against whom such judgment has been entered, together with such other facts disclosed by his records as may assist in identifying the record of the birth of the child as the same may appear in the office of said registrar. If such judgment shall thereafter be vacated that fact shall be reported by the clerk in like manner. ('17 c. 210 § 1)

3225 (c). Physician may testify—In any proceeding under this chapter a licensed physician or surgeon may testify concerning the fact and probable date of inception of the pregnancy of his patient without her consent, and shall so testify when duly called as a witness. ('17 c. 210 § 1)

3225 (d). Construction of act—This chapter shall be liberally construed with a view to affecting its purpose, which is primarily to safeguard the interests of illegitimate children and secure for them the nearest possible ap-

proximation to the care, support and education that they would be entitled to receive if born of lawful marriage, which purpose is hereby acknowledged and declared to be the duty of the state; and also to secure from the fathers of such children repayment of public moneys necessarily expended in connection with their birth. ('17 c. 210 § 1)

3225 (e). Records private—All records of court proceedings in cases of alleged illegitimacy shall be withheld from inspection by, and copies thereof shall not be furnished to, persons other than the parties in interest and their attorneys, except upon order of the court. ('17 c. 210 § 1)

[3225—]1. **Partial invalidity of act**—The provisions of this act are severable one from another and in their application to the persons and interests affected thereby. The judicial declaration of the invalidity of any provision, or the application thereof, shall not affect the validity of any other provision, or the application thereof. ('17 c. 210 § 2)

CHAPTER 18

PUBLIC EXAMINER

3236. Subpoenas, witnesses, etc.—

Cited (131-116, 154+750).

CHAPTER 19

INSURANCE

INSURANCE COMMISSIONER

3243. Use of contingent fund—The contingent fund appropriated for the use of the department of insurance may be expended by the commissioner of insurance as he may deem for the best interest of said department. ('11 c. 386 § 4, amended '15 c. 208 § 1)

3245. Same—Examination of companies—Powers of commissioner—At least once in every two years, the commissioner of insurance shall personally, or by his deputy, actuary, examiners or other salaried employé of his office, visit each domestic insurance company, other than township mutual fire insurance companies, and carefully examine its affairs for the purpose of ascertaining its financial condition and ability to fulfill its obligations, and if it be complying with all the provisions of law. He may also make such examination at any other time that he shall have reason to believe that such company is in an unsound condition, or that it is not conducting its business according to the provisions of law. He may also personally or by his deputy, actuary, examiners or other salaried employé of his office whenever he shall deem it necessary, make an appraisal of any or all of the company's assets. The commissioner, or person making the examination by his direction shall have free access to all books and papers of any company, and of the books and papers of any of its agents, that may relate to its business, and may summon and examine under oath of its directors, officers, agents, trustees, or other persons, in relation to its affairs and condition. The commissioner of insurance may in like manner, whenever he deems it necessary, make an examination of the affairs or an appraisal of any or all of the assets of any insurance company admitted, or applying for admission to do business under the laws of this state.

In the case of foreign insurance companies admitted or applying for admission to do business in this state, the insurance commissioner may, in his discretion, accept the report of examination made by the commissioner of insurance or corresponding officer of the state in which such company has its home office, in lieu of making the examination of such company authorized by the laws of this state. ('11 c. 386 § 6, amended '15 c. 208 § 2)

3246. Same—Fees for examination—Expenses—When any such visitation, examination or appraisal is made by the insurance commissioner, his deputy, actuary or chief examiner, the company so examined, except township mutual fire insurance companies, and companies organized exclusively to write insurance against loss or damage by cyclone, tornado and windstorm, or any one or more of them, upon the mutual plan, shall pay a fee to the said department of insurance of \$15.00 per day for each and every day necessarily occupied by such person, and each one thereof in making said examination, or in making an appraisal of any of the assets of said company. When such visitation, examination or appraisal is made, or engaged in, by any other person regularly employed in the said department of insurance and receiving a salary from the State of Minnesota, the company so examined, except township mutual fire insurance companies and companies organized exclusively to write insurance against loss or damage by cyclone, tornado and windstorm or any one or more of them, upon the mutual plan, shall pay as fees to the said department of insurance the sum of \$10.00 per day, for each and every day necessarily occupied by such other person, and each one thereof, in making or assisting to make, the examination, or in making an appraisal of any of the assets of said company. In addition to the fees mentioned herein the company so examined shall also pay to the department of insurance the necessary expenses of any such person or persons so engaged in connection with any such examination or appraisal. All of which fees and expenses shall be accounted for and turned into the treasury of the State of Minnesota. In case of the examination of township mutual fire insurance companies, and companies organized exclusively to write insurance against loss or damage by cyclone, tornado and wind storm, or any one or more of them upon the mutual plan, the actual expenses only thereof shall be charged. The necessary expenses of any such person or persons so engaged in connection with any such examination or appraisal shall be repaid by the state treasurer to any such person or persons so engaged in connection with said examination or appraisal upon vouchers of the same, on condition that such expenses shall have been previously charged to such company so examined and the full amount thereof by it paid into the state treasury. ('11 c. 384 § 7, amended '15 c. 208 § 3)

3247. Same—Professional insurance actuary, when and how appointed—Appraisal—Compensation—The commissioner of insurance may, when he shall deem it necessary, appoint any experienced and competent professional insurance actuary to personally make or conduct or assist in making or conducting an examination of any insurance company admitted, or applying for admission, to do business in this state, on condition that he, the commissioner of insurance, shall have previously filed with the secretary of state during the last immediately preceding month of January or July, as the case may be, or within thirty days from the passage of this act, a written declaration designating such person, by name and address, as a consulting actuary of the Minnesota department of insurance. And in such case, the commissioner of insurance shall fix a reasonable compensation for such examiner on a per diem basis for the actual time employed in making or conducting or assisting to make or conduct such examination, and which, including expenses of any necessary appraisal or clerical assistance, shall be charged to the company so examined. And the compensation for such examiner, appraisal or clerical assistance, together with the amount of his necessary expenses actually incurred in connection with such examination, shall, upon proper vouchers therefor, be paid to him by the state on condition that same shall have previously been charged to such company and by it paid into the state treasury.

The Commissioner of Insurance, when he shall deem it necessary, may ap-

point any competent person to make an appraisal of any or all of the assets of any such company, at a compensation of not exceeding ten dollars (\$10.00) per day and necessary expenses incurred in connection therewith, which compensation and expenses shall be paid to the department of insurance by such company and by it accounted for and turned into the treasury of the State of Minnesota; and which compensation and expenses shall be repaid by the state treasurer to any person so appointed upon proper vouchers of the same on condition that such fees and expenses shall have previously been charged to such company and the full amount thereof by it paid into the state treasury. ('11 c. 386 § 8, amended '15 c. 208 § 4)

3252. Same—Existing policies—Duties of commissioner as to future policies—Within thirty days after the passage of this act each officer, board of control, board of regents, agent or agency of the state of any kind, having in charge any public buildings or property of any kind whatsoever belonging to the state shall report to the commissioner of insurance of the state each policy of insurance which shall be then in force upon any property of any kind belonging to the state, showing in said report the property covered by such insurance, date of expiration of policy, rate of insurance, and amount paid.

Upon August 1st, 1913, and annually thereafter, the commissioner of insurance of the state shall provide for the insurance by the state of all state property not exceeding 33 per cent of the value on fireproof buildings nor 66 per cent on non-fireproof buildings. First, he shall determine the insurable value of each item of property and shall fix the rate of premium which in his opinion is the average rate charged by responsible fire and tornado insurance companies doing business in this state and issuing insurance policies upon property of similar kind and exposed to risk of fire or tornado in like manner.

He shall then ascertain the amount of insurance in force upon all state property and provide for such additional insurance as is necessary.

He shall certify to the state treasurer the amount of insurance upon such property to be carried by the state and order the state treasurer to credit to an account which shall be kept by the treasurer and known as the state insurance account, an amount which shall be equal to the premium as fixed by the commissioner of insurance, and the amount so credited by the state treasurer to the state insurance account shall be debited by the state treasurer to that account which shall be kept upon his books with the proper officer, agent, or board of trustees or regents which may have such public buildings and property in its charge, and the amount so debited by the state treasurer to said officer, agent or board shall be deducted by him from any funds which may be in his hands, or which may thereafter come into his hands and payable to said officer, agent or board of trustees or regents for insurance on state property.

The state commissioner of insurance shall not cause any policies to be cancelled which may be in effect on August 1st, 1913, but shall provide for the insurance of buildings and property as hereinbefore stated, increasing the amount of state insurance at such times as the policies existing on August 1st, 1913, may from time to time expire so as to maintain at all times the amount of insurance required by the provisions of this act. (Amended '15 c. 99 § 1)

GENERAL PROVISIONS

3257. Insurance defined—Unlawful contracts—Contracts deemed made in this state—Insurance is any agreement whereby one party, for a consideration, undertakes to indemnify another to a specified amount against loss or damage from specified causes, or to do some act of value to the assured in case of such loss or damage. It shall be unlawful for any person, firm or corporation to solicit or make or aid in the soliciting or making of any contract of insurance not authorized by the laws of this state. All contracts of insurance on property, lives or interests in this state, shall be deemed to be made in this state. (Amended '17 c. 308 § 1)

3258. [Superseded.]

See § [3258—]2.

[3258—]1. Corporations authorized to transact business in other states and foreign countries—Classification of purposes, etc.—Insurance corporations shall be authorized to transact in any state or territory in the United States, in the Dominion of Canada, and in foreign countries, when specified in their charters or certificates of incorporation, any of the following kinds of business, upon the stock plan, or upon the mutual plan when the formation of such mutual companies is otherwise authorized by law:

1. To insure against loss or damage to property on land and against loss of rents and rental values, lease-holds of buildings, use and occupancy and direct or consequential loss or damage caused by change of temperature resulting from the destruction of refrigerating or cooling apparatus, or any of its connections, by fire, lightning, windstorm, tornado, cyclone, earthquake, hail, frost or snow and loss or damage to property by explosion, whether fire ensues or not, except explosions on risks specified in subdivision 3 of this section, also against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps or other apparatus erected for extinguishing fires, and of water pipes, and against accidental injury to such sprinklers, pumps or other apparatus.

2. To insure vessels, freights, goods, wares, merchandise, species, bullion, jewels, profits, commissions, bank notes, bills of exchange, and other evidences of debt, bottomry and respondentia interest, and every insurance appertaining to or connected with marine risks and risks of transportation and navigation, including the risks of lake, river, canal and inland transportation and navigation.

3. To insure steam boilers and pipes, fly-wheels, engines and machinery connected therewith or operated thereby, against explosion and accident, and against loss or damage to persons or property resulting therefrom, and against loss of use and occupancy caused thereby; and to make inspection of and to issue certificates of inspection upon such boilers, pipes, fly-wheels, engines and machinery.

4. To make contracts of life and endowment insurance, to grant, purchase, or dispose of annuities or endowments of any kind, and to insure against accidents to or sickness of the assured.

5. To insure against loss or damage by the sickness, bodily injury or death by accident of the assured, or of any other person employed by or for whose injury or death the assured is responsible.

6. To guarantee the fidelity of persons in fiduciary positions, public or private, or to act as surety on official and other bonds, and for the performance of official or other obligations.

7. To insure owners and others interested in real estate against loss or damage, by reason of defective titles, incumbrances, or otherwise.

8. To insure against loss or damage by breakage of glass, located or in transit.

9. To insure against loss by burglary, theft or forgery.

10. To insure against loss from the death of domestic animals and to furnish veterinary service.

11. To guarantee merchants and those engaged in business, and giving credit, from loss by reason of giving credit to those dealing with them; this shall be known as credit insurance.

12. To insure against loss or damage to automobiles or other vehicles and their contents, by collision, fire, burglary or theft, and other perils of operation, and against liability for damage to persons, or property of others by collision with such vehicles, and to insure against any loss or hazard incident to the ownership, operation or use of motor or other vehicles.

13. To insure against liability for loss or damage to the property of another caused by the insured or by those for whom the insured is responsible.

14. To insure against any loss or damage resulting from accident or injury suffered by any person, occurring in the practice of medicine, or surgery or in the dispensing of drugs or medicine, for which loss or damage the insured may be legally liable.

15. To make contracts providing that upon the death of the assured, a funeral benefit will be paid or a funeral service furnished, the aggregate amount or value of which shall not exceed \$150 upon any one life.

The paid up capital stock of every such corporation authorized to transact the kinds of business enumerated in subdivisions 1 to 15 of this section shall not be less than specified below:

- Subdivision 1, \$100,000.
- Subdivision 2, \$100,000.
- Subdivision 3, \$100,000.
- Subdivision 4, \$100,000.
- Subdivision 5, \$100,000.
- Subdivision 6, \$250,000, and a surplus constantly maintained of at least \$50,000.
- Subdivision 7, \$200,000.
- Subdivision 8, \$100,000.
- Subdivision 9, \$100,000.
- Subdivision 10, \$100,000.
- Subdivision 11, \$100,000.
- Subdivision 12, \$100,000.
- Subdivision 13, \$100,000.
- Subdivision 14, \$100,000.
- Subdivision 15, \$10,000.

Companies organized to transact the business specified in Subdivision 15 shall be subject to all the provisions of law relating to legal reserve life insurance companies, except that the deposit with the commissioner of insurance shall be \$10,000 and that such company shall have secured at least one hundred applications, upon one hundred separate lives, for insurance aggregating at least \$10,000. Such companies shall issue only nonparticipating policies, which shall be construed as industrial policies.

Any such corporation having a paid up capital stock of not less than \$200,000 and a surplus of not less than \$50,000 constantly maintained may, when authorized by its articles of incorporation, transact any or all of the kinds of business specified in subdivisions 1 to 15 inclusive, excepting those specified in subdivisions 1, 2, 4, 6 and 15.

Any such corporation having a paid up capital stock of not less than \$200,000, may transact the kinds of business specified in subdivisions 1, 2 and 12 of this section.

Any such corporation having a paid up capital stock of not less than \$200,000, and authorized to transact the kinds of business specified in subdivision 4 of this section may also transact the kinds of business specified in subdivision 5.

Any such corporation, having a paid-up capital stock of not less than \$250,000, and a surplus of not less than \$50,000 constantly maintained, when authorized to transact the kinds of business specified in subdivision 6, may also transact the kinds of business specified in subdivisions 7, 8, 9, 10, 11, 12, 13 and 14. ('15 c. 138 § 1)

16. The charter or certificate of incorporation of any insurance corporation organized under any general or special law may be amended in respect to any matter which an original certificate of a corporation of the same kind may lawfully have contained by the adoption of a resolution specifying the proposed amendment and by the approval, filing, recording and publication of the same in the manner prescribed by the general laws of this state relating to amendments to certificates of incorporation. ('15 c. 138 § 1, amended '17 c. 29 § 1)

[3258—]2. Retaliatory provisions against other states, etc.—Repeal—Whenever the laws of any other state, territory or country prohibit the organization of or do not provide for the organization of or the licensing in such state, territory or country of a class or kind of insurance companies or associations organized under the laws of this state and authorized to transact the business of insurance in this state, then companies or associations of the same

kind or class of such other state, territory or country shall not be licensed to do business in this state.

This provision shall not apply to companies or associations organized under the laws of another state now licensed to do business in this state.

No insurance company or association or fraternal beneficiary association, not specifically exempted therefrom by law, shall transact the business of insurance in this state unless it shall hold a license therefor from the commissioner of insurance.

Chapter 418 of the laws of 1913 [3258] is hereby repealed. ('15 c. 138 § 2)

[3258—]3. **Certain corporations permitted to insure against loss or damage to property from explosion, bombardment or acts of war**—Any domestic insurance corporation having corporate power to transact any of the kinds of business described in subdivision 1 of section 1 of chapter 138, General Laws of Minnesota for 1915 [3258—1], is hereby granted corporate power and authority to insure, and is authorized to insure against loss or damage to property resulting from explosion, bombardment or acts of war or occasioned by or resulting from a state of war between the United States and any foreign state or nation or between any two or more foreign states or nations; and any foreign insurance corporation duly licensed to transact in this state any of the kinds of business specified in said subdivision 1 of section 1 of chapter 138, Laws of 1915 [3258—1], is hereby authorized to insure in this state against the risks hereinabove specified, provided such foreign corporation has corporate authority so to do under the law of its creation. ('17 c. 276 § 1)

[3258—]4. **Same—Form of policy**—No policy insuring against any such loss or damage shall be issued or delivered in this state until the form thereof has been filed with the commissioner of insurance and approved by him. ('17 c. 276 § 2)

PUBLIC SUPERVISION

3273. **Commissioner's report to include what**—The annual report of the commissioner shall include a statement of the receipts and expenditures of his department, a statement of the financial condition and business transactions of the several insurance companies doing business in the state, as disclosed by official examinations and by their annual statements, the condition of the receiverships of insolvent companies, and such other information as he thinks proper. (Amended '15 c. 81 § 1)

PROVISIONS COMMON TO ALL COMPANIES

3297. [Repealed.]

See § [3601—]21.

3300. **Misrepresentation by applicant**—

123-453, 144+218, Ann. Cas. 1915A, 458.

Contractor's statement in application for insurance of risks under Workmen's Compensation Act that he did not operate a "steam railroad, switch, or side track," followed by the policy, was a material misrepresentation, where, unknown to insurer, he used a "dinkey" steam locomotive on temporary tracks (162+894). Insurance, ~~§~~285½, New, vol. 15 Key-No. Series.

In an action on an accident policy, the provisions of this section, and not those of § 3467, control, the policy having been written, and the death claimed to be accidental having occurred, prior to the going into effect of 1913 c. 156 (post, §§ 3522-3535); § 3527 providing what shall be the effect of a false statement in an application for an accident policy (134-192, 158+967). Insurance, ~~§~~250(1).

3302. **Taxation—Salvage corps**—Every domestic and foreign company, except town and farmers' mutual fire insurance companies, and domestic mutual fire insurance companies, shall pay to the state treasurer on or before March 1, annually, a sum equal to 2 per cent of the "gross" premiums less return premiums "on all direct business" received by it in this state, or by its agents for it, in cash or otherwise, during the preceding calendar year. In the case of every domestic company such sums shall be in lieu of all other taxes except those upon real property owned by it in this state, which shall be taxed the same as like property of individuals, and in the case of every foreign company such sums shall be in lieu of all other taxes, except those upon real

and personal property owned by it in this state, which shall be taxed the same as like property of individuals, and except that in addition thereto, every foreign fire company doing business in any city wherein a salvage corps has been established pursuant to law for which such company or its agents for it are not otherwise subject to taxation shall at the same time pay to the treasurer of the duly authorized board of underwriters therein a tax equal to 2 per cent of the gross amount of premiums received by it, or for it, in such city, which shall be used by such board for the equipment and maintenance of such corps.

The provisions of this section shall not apply to any domestic mutual company insuring its members against loss or damage by tornado, hail or cyclone, or loss of live stock from disease or accident, which pays as salary and compensation to any one officer or member in any year no more than the aggregate sum of one thousand dollars (\$1,000) nor to domestic companies organized exclusively to write insurance against loss or damage by cyclone, tornado and windstorm, or any one or more of them upon the mutual plan, which pay as salary and compensation to any one officer or member in any one year no more than the aggregate sum of two thousand dollars (\$2,000). (Amended '07 c. 321; '15 c. 184 § 1)

An insurance company held to be a "town and farmers' mutual insurance company," within the exception in this section, and hence not subject to the 2 per cent. tax on premiums (130-384, 153+594). Taxation, ¶230.

CERTAIN MUTUAL COMPANIES

3307. Assessments, when and how made—Relief—Whenever the net assets of any mutual insurance company are insufficient for the payment of incurred losses and expenses above its reinsurance reserve, as provided by law, it shall make an assessment for the amount required ratably upon its members liable thereto. The order for assessment shall be duly entered upon its records, with a statement of its condition at the date thereof, including all cash assets, deposit notes, and contingent amount liable to such assessment, the amount of the assessment, and the particular losses or other liabilities for which it is made. Such record shall be signed by each director voting for the order before any part of the assessment is collected, and any person liable thereto may inspect and take a copy thereof.

Provided, that the commissioner of insurance may by written order relieve such company from an assessment or other proceedings to restore such assets during the time fixed in such order, when such deficiency does not exceed ten (10) per cent of its admitted assets. (Amended '15 c. 354)

Decree for assessment (121-221, 141+117). Insurance, ¶71(2).

Credit on assessment (121-221, 141+117). Insurance, ¶71(3).

A mutual hail and cyclone insurance company is required to make assessments for loss and expenses upon all members liable thereto, pro rata, and assessments which levy a greater rate on members in one locality than those in another cannot be enforced (126-245, 148+305). Insurance, ¶191.

3308. Same—Guaranty fund—

Validity of notice of assessment (121-221, 141+117). Insurance, ¶71(2).

STOCK COMPANIES

3313. Capital, when paid in—Funds, how invested—The capital of every stock company shall be paid in full in cash within six months from the date of its certificate of incorporation, and thereupon a majority of the directors shall certify under oath to the commissioner that such payment in cash has been made by the stockholders for their respective shares, and is held as the capital of the company, and until then no policy shall be issued. Except as otherwise provided by law, the funds of every domestic company shall be invested in, or loaned upon, one or more of the following kinds of securities or property, and under the restrictions and conditions herein specified, viz.:

1. Bonds or treasury notes of the United States, national or state bank

stock, interest bearing bonds or certificates of indebtedness at market value of this or any other state, or of any city, town, or county in this or any other state, or of the Dominion of Canada or any province thereof, having legal authority to issue the same, at market value, subject in every case to the same limitations and restrictions, according to the last assessment for taxation, which exist in this state upon issue of securities by such or like municipalities at the date of the investment.

2. Notes or bonds, approved by the commissioner, secured by first mortgage on improved real estate in this or any other state, worth at least twice the amount loaned thereon, not including buildings unless insured by policies payable to and held by the security holder.

3. Stock or bonds at market value, approved by the commissioner, upon which stock interest or dividends of not less than three per cent have been regularly paid for three years immediately preceding the investment, of any public service corporation incorporated by or under the laws of the United States, or any state, or the Dominion of Canada, or any province thereof.

4. Insurance policies, issued by itself, to an amount not exceeding the net or reserve value thereof.

5. Promissory notes maturing within six months, secured by the pledge of registered terminal warehouse receipts issued against grain deposited in terminal warehouses as defined in Section 4435, Revised Laws of Minnesota for 1913. At the time of investing in such notes the market value of the grain shall exceed the indebtedness secured thereby, and the note or pledge agreement shall provide that the holder may call for additional like security or sell the grain without notice upon depreciation of the security. The insurance company may accept, in lieu of the deposit with it of the warehouse receipts, a trustee certificate issued by any national or state bank at a terminal point, certifying that the warehouse receipts have been deposited with it and are held as security for the notes. The amount invested in the securities mentioned in this subdivision shall not at any time exceed twenty-five per cent of the capital stock of the company.

6. Loans on pledge of any such securities, but not exceeding eighty per cent of the market value of stocks and ninety-five per cent of the market value of bonds specified in subds. 1 and 3; and in all loans reserving the right at any time to declare the indebtedness due and payable when in excess of such proportion or upon depreciation of security. (1635) (Amended '15 c. 82 § 1)

FIRE INSURANCE COMPANIES

3318. Standard policy—

In proceedings to appraise losses under this section, the parties are entitled to be heard and to present evidence as in common-law arbitrations, and the competency of the appraisers is to be determined by the rules of such cases. Where a policy contains a provision as to appraising losses required by this section, and the appraisal is initiated, and one party refuses to recognize the appraiser appointed by the other on the ground that he is incompetent, the burden is upon such party to show such incompetency. The mere fact that appraisers are not experts in the line of business to which such matters pertain is not alone sufficient to sustain a charge of incompetency (125-374, 147+242, 52 L. R. A. [N. S.] 496). Insurance, ~~§~~570. Vacation of award of referees for inadequacy (121-160, 141+104). Insurance, ~~§~~574(4).

[3321—]1. Rating bureaus, etc.—Power of commissioner—Examination and report—The commissioner of insurance may address inquiries to any individual, association or bureau, which is or has been engaged in making rates or estimates for rates for fire insurance upon property in this state, in relation to its organization, maintenance or operation, or any other matter connected with its transactions, and may require the filing of schedules, rates, forms, rules, regulations and other information, and it shall be the duty of every such individual, association or bureau, or some officer thereof, to promptly make such filing and reply to such inquiries in writing.

The commissioner of insurance shall have power to examine any such rating bureau as often as he deems it expedient to do so, and shall do so not less than once every three years. A report thereof shall be filed in his office. The

commissioner of insurance may waive such examination upon the filing with him of a report of such examination made by some other insurance department or proper supervising officer within such three years. A statement with regard to such examination shall be made in the annual report of the commissioner of insurance. ('15 c. 101 § 1)

[3321—]2. Same—Discriminatory rates forbidden—Variation from bureau rate, etc.—No fire insurance company or other insurer against the risk of fire or lightning, nor any rating bureau, shall fix or charge any rate for fire insurance upon property in this state which discriminates unfairly between risks in the application of like charges and credits, or which discriminates unfairly between risks of essentially the same hazards and having substantially the same degree of protection against fire.

Any company or other insurer which shall desire to make any variation from the bureau rate upon any class of risks may do so but shall file with the commissioner of insurance and with the bureau of which it is a member or to which it is a subscriber, a written statement of such variation, at least fifteen (15) days in advance of such variation taking effect, and such variation shall be uniform and applicable to all risks of essentially the same hazard in the class for which such variation is made. If any insurer grants a lower rate on any class of property than that fixed by the rating bureau of which it is a member or subscriber, or by the Commissioner of Insurance as provided by this act, such rate shall not be increased by such insurer until one year has elapsed, without the approval of the Commissioner of Insurance. Provided that a declaration filed with the Insurance Commissioner by any insurance company of its intention to write insurance at a uniform variation of a certain per cent from the bureau rate, shall be a sufficient compliance with the requirements of this section. ('15 c. 101 § 2)

The holder of a fire policy in the Minnesota standard form, who makes a payment for a vacancy permit according to the rates prescribed by a rating board under this act is not entitled to recover the amount so paid, though his policy was issued before the passage of this act, the policy containing a provision that it should be void if the premises became vacant and remain so for 30 days without the assent of the insurer (135-483, 160+664). Insurance, 6-198(1).

[3321—]3. Same—Insurance company to maintain or be member of rating bureau—Bureau, how constituted, etc.—Every fire insurance company or other insurer authorized to effect insurance against the risks of loss or damage by fire or lightning in this state shall maintain or be a member of a rating bureau. No such insurer shall be a member of more than one rating bureau for the purpose of rating the same risk.

A rating bureau may consist of one or more insurers, and when consisting of two or more insurers shall admit to membership any authorized insurer applying therefor. The expenses of the bureau shall be shared in proportion to the gross premiums received by each member during the preceding year in this state, to which may be added a reasonable annual fee of not to exceed Fifty Dollars. Each member shall have one vote.

Every rating bureau shall maintain an office within the United States.

Within sixty days after the passage of this act, every fire insurance company or other insurer aforesaid, shall notify the Commissioner of Insurance in writing of each rating bureau making rates upon property located within this state of which it is a member and shall thereafter annually on or before February 1st report to the Commissioner of Insurance in writing each such rating bureau of which it is a member, and during the year, file written notice of any other such rating bureau of which it shall become a member. ('15 c. 101 § 3)

[3321—]4. Same—Duties of bureau—Inspection and survey of risks—Every rating bureau engaged in making rates or estimates for rates for fire insurance on property in this state shall inspect every risk specifically rated by it upon schedule, and make a written survey of such risk, which shall be filed as a permanent record in the office of such bureau. A copy of such survey shall be furnished to the owner upon request. ('15 c. 101 § 4)

[3321—]5. **Same—Agreements not in compliance with act forbidden—Submission to commissioner—Order of disapproval—Service—**No fire insurance company or any other insurer and no rating bureau, or any representative of any fire insurance company or other insurer or rating bureau, shall enter into or act upon any agreement with regard to the making, fixing or collecting of any rate for fire insurance upon property within this state, unless in compliance with this act.

Any such agreement may be made and enforced, provided the same be in writing, and, prior to its taking effect, a copy thereof be filed with the commissioner of insurance and with each rating bureau of which any of the parties thereto shall be a member or subscriber.

The commissioner of insurance may, after due notice and hearing, upon complaint or upon his own motion, make an order disapproving any such agreement. No such agreement shall be in force, nor shall any act or rights be based thereon, after service of a copy of such order upon each of the parties to such agreement and upon each bureau with which such agreement is required to be filed. Service may be made by mail and shall be completed upon the expiration of a reasonable time for transmission fixed in such order. The action of the commissioner of insurance in making or refusing to make any such order shall be subject to review by the District Court, as hereinafter provided. ('15 c. 101 § 5)

[3321—]6. **Same—Review of rates—Power of commissioner—Complaint—Appeal, etc.—**The commissioner of insurance shall have power, on written complaint or upon his own motion, to review any rate fixed by any bureau for fire insurance upon property within this state, for the purpose of determining whether the same is discriminatory or unjust. He shall have power to order the discrimination or unjust rate removed and fix and order a rate in lieu of the bureau rate found to be discriminatory or unjust and the rate so ordered and fixed shall become the bureau rate.

No action shall be taken by said commissioner of insurance unless upon a written complaint under the oath on information and belief of the person or persons interested, showing in substantial detail the ground for complaint with such data as will reasonably enable the commissioner of insurance to determine whether there is probable cause therefor, and no such action shall be taken nor shall there be any hearing thereon until a copy of said complaint and data shall have been sent by registered mail or special delivery to the insurance company or bureau concerned and such insurance company or bureau shall have at least ten days' notice of any hearing thereon.

Any person aggrieved by any such order or decision made by the commissioner of insurance may appeal therefrom to the district court of the county where the aggrieved party may reside within thirty (30) days from the making and filing of such order or decision by filing in the office of said commissioner a notice of such appeal in writing, and in such case the said commissioner shall within ten (10) days after the filing of such notice make and return to said district court a full and complete certified transcript of the findings and order appealed from, and of all papers relating thereto on file in his office, including such notice of appeal, and upon the filing of such certified transcript such appeal and all matters involved therein shall be brought on for trial upon the merits at the next term of said court after the filing of such transcript, unless otherwise ordered by the court; and upon such trial the findings of fact on which such order is based shall be prima facie evidence of the matters therein stated.

During the pendency of such proceedings upon review the order of the commissioner of insurance shall be suspended but in event of final determination against any insurer any overcharge by such insurer during such review shall be refunded to the persons entitled thereto. ('15 c. 101 § 6)

[3321—]7. **Same—Penalties for violation—**Any fire insurance company or other insurer or rating bureau or representative of any fire insurance company or other insurer or rating bureau guilty of a violation of any of the pro-

visions of this act or orders or findings of the commissioner of insurance made hereunder, shall be punished by a fine of not less than \$100 nor more than \$5,000. In addition thereto the license of any fire insurance company, agent or broker guilty of such violation may be revoked or suspended by the commissioner of insurance. Any rating bureau examined by the commissioner of insurance under the provisions of this act shall pay to the commissioner of insurance for such examination the same fees required for examinations of foreign fire insurance companies. ('15 c. 101 § 7)

[3321—]8. **Same—Not to apply to certain companies**—The provisions of this act shall not apply to county or township, mutual insurance companies. ('15 c. 101 § 8)

3322. Whole amount collectible—Co-insurance, etc.—

Cited (131-19, 154+515; 161+217).

3325. Adjustment—Reference—

Cited (125-512, 147+651).

An insurance company held to have waived its right to arbitration, so that insured was entitled to maintain an action to recover damages for failure to replace a building burned, without first having resorted to arbitration (125-518, 145+376). Insurance, ~~6~~612(3).

FIRE DEPARTMENT AID

3345. Disposition of such funds—Relief association—Such amount shall be kept as a special fund, and disbursed only for the following purposes:

(1) For the relief of sick, injured, or disabled members of such fire department, their widows and orphans.

(2) For the equipment and maintenance of such department.

But if there shall be a duly incorporated fire department relief association in such municipality, organized with the consent of the governing body thereof, such amount shall be paid to the treasurer of said relief association, to be disbursed as hereinabove prescribed for municipalities, and as hereinafter provided for service pensions, or relief of sick, injured, or disabled, active or retired members of the fire department in such city who are members of such relief association. In case any fire department relief association or any trustee having any of said funds in its hands shall resign its trust in relation thereto, or shall be dissolved or shall have been heretofore or shall be hereafter removed as such trustee, the district court of the proper county may appoint a trustee or trustees of said funds, or cause such trust to be executed by its officers under its direction, or such court may direct that such trust funds be paid to the treasurer of the proper municipality, and all funds so held in trust or so paid to any such treasurer shall be kept as a special fund and disbursed only for the purposes provided in this section. (Amended '17 c. 207 § 1)

As between the state and members of the fire department the pension is a gratuity; and the state may take it away, except so far as it has accrued, without affecting a vested right or violating the constitution (125-174, 145+1075, Ann. Cas. 1915C, 749). Constitutional Law, ~~6~~102(2); Municipal Corporations, ~~6~~176(3).

3347. Service pensions—Every fire department relief association organized under any laws of this state, whenever its certificate of incorporation or by-laws so provide, may pay out of any funds received from the state, or other source, a service pension, in such amount, not exceeding forty dollars (\$40.00) per month, as hereinafter authorized, or as may be provided by its by-laws, to each of its members, who have heretofore retired or may hereafter retire, who has reached or shall hereafter reach the age of fifty (50) years, and who has done, or hereafter shall do, active duty for twenty (20) years, or more as a member of a volunteer paid, or partially paid and partially volunteer fire department in the municipality where such association exists, and who has been, or shall hereafter be, a member of such fire department relief association at least ten (10) years prior to such retirement, and who complies with such additional conditions as to age, service, and membership as may be prescribed by the certificate or by-laws of such association.

The amount of monthly pension which may be paid to such retired fire-

men may be increased by adding to the maximum above prescribed, an amount not exceeding two dollars per month for each year of active duty over twenty years of service before retirement, provided, however, that no such fire department relief association shall pay to any member thereof a pension in any greater amount than the sum of sixty dollars per month. No such pension shall be paid to any person while he remains a member of the fire department, and no person receiving such pension shall be entitled to other relief from such association. No payments made or to be made by said association to any member on the pension roll shall be subject to judgment, garnishment or execution, or other legal process, and no person entitled to such payment shall have the right to assign the same, nor shall the association have the authority to recognize any assignment or pay over any sum which has been assigned. (Amended '17 c. 514 § 1)

3348. Fireman's relief associations in cities having 50,000 inhabitants—Pensions—

Where a member of the Minneapolis Fire Department Relief Association is determined by the association to be disabled, within the meaning of the constitution and by-laws of such association, such member obtains a vested legal right to such benefit, of which he cannot be deprived except by due process of law (124-381, 145+35, 50 L. R. A. [N. S.] 1018). Constitutional Law, ¶102(2).

A determination by such association that a member has fully recovered from a disability is not conclusive, where the member had no notice and was not offered an opportunity to be heard upon the question. The rights of the parties in such case are not analogous to and controlled by the principles of law applicable to mutual benefit societies (124-381, 145+35, L. R. A. [N. S.] 1018). Municipal Corporations, ¶187.

3349. Same—Pension for injuries or disabilities—

This section, with § 3355, as amended, is not unconstitutional, as class legislation, because based upon an arbitrary distinction between wives of common-law marriages and wives of ceremonial marriages (126-332, 148+279). Constitutional Law, ¶208(3).

Where, prior to the passage of 1913 c. 318, the defendant denied liability to plaintiff, but upon action brought such liability was found by the court and judgment directed accordingly prior to such passage, and was entered afterwards, such judgment will not be enforced in proceedings by contempt, where the widow was the pensioner's common-law wife (126-332, 148+279). Contempt, ¶21.

Under this section, as amended, the widow of a fireman, otherwise entitled to the pension, who was his common-law wife, is not entitled thereto (126-332, 148+279). Municipal Corporations, ¶200.

3355. Same—Disposition of fund—Relief association, etc.—

This section, as amended, is not unconstitutional, as class legislation, because based upon an arbitrary distinction between widows of common-law marriages and widows of ceremonial marriages (126-332, 148+279). Constitutional Law, ¶208(3).

Where, prior to the passage of 1913 c. 318, the defendant denied liability to plaintiff, but upon action brought such liability was found by the court and judgment directed accordingly prior to such passage, and was entered afterwards, such judgment will not be enforced in proceedings by contempt, where the widow was the pensioner's common-law wife (126-332, 148+279). Contempt, ¶21.

A finding, evidentiary in character, in the absence of a specific assignment, is held a sufficient finding that plaintiff was not dependent upon her husband for support within this section. That the widow had separated from her husband, and was obtaining a living from an immoral occupation, does not prevent her from receiving a pension under 1907 c. 24, and the defendant's articles and by-laws. 1913 c. 318, defining the term "widow," as used in 1907 c. 24, was intended to apply as of that date to widows then receiving pensions as well as widows who might thereafter claim them (125-174, 145+1075, Ann. Cas. 1915C, 749). Municipal Corporations, ¶200.

Under this section, as amended, the wife of a fireman, otherwise entitled to the pension, who was his common-law wife, is not entitled hereto (126-332, 148+279). Municipal Corporations, ¶200.

[3358—]1. Fund for pensioning disabled fire insurance patrolmen, etc., in certain cities, etc., having 50,000 inhabitants—Board of trustees—That in all cities, villages, or incorporated towns whose population exceeds 50,000, having a paid fire insurance patrol, a fund shall be created by the board of underwriters of such cities, villages, or towns, for the pensioning of disabled fire insurance patrolmen and the widows and children of deceased patrolmen; to authorize the retirement from service and the pensioning of members of the fire insurance patrol, and for other purposes connected therewith. Such fund shall be controlled and managed by the board of trustees composed of the president, secretary, treasurer, and the superintendent or chief officer of

the fire insurance patrol of the board of underwriters of such city, village, or town, under the name of "The board of trustees of the patrolmen's pension fund." The said board shall elect from their number a president, secretary and treasurer. ('17 c. 196 § 1)

[3358—]2. Same—Powers and duties of board—Assessments—Duty of treasurer of board of underwriters—The said board of trustees shall have exclusive control and management of all money donated, paid or assessed for the relief or pensioning of disabled, superannuated and retired members of the fire insurance patrol, their widows and minor children, and shall assess each member of the fire insurance patrol not to exceed one per cent (1%) of the salary of such members, to be deducted and withheld from the monthly pay of each member so assessed. And the treasurer of the board of underwriters of such city, village, or town, shall annually set aside and pay to the treasurer of said board of trustees not to exceed four per cent (4%) of all moneys paid to him by insurance companies for the support of said fire insurance patrol for the first eight (8) years after the passage of this bill, and not to exceed two per cent (2%) of said moneys thereafter, the same to be placed by the treasurer of the board of trustees to the credit of such fund, subject to the order of such board of trustees.

The said board shall make all needful rules and regulations for its government in the discharge of its duties; shall hear and decide all applications for relief or pensions under this act and its decisions on such applications shall be final and conclusive and not subject to review or reversal except by the board of trustees. The said board of trustees shall cause to be kept a record of all its meetings and proceedings. ('17 c. 196 § 2)

[3358—]3. Same—Rewards, etc., to be paid into pension fund—All rewards in moneys, fees, gifts and emoluments that shall be paid or given for or on account of extraordinary services by said fire insurance patrol or any member thereof (except when allowed to be retained by such member, or given to endow a medal or other permanent or competitive award) shall be paid into said pension fund. ('17 c. 196 § 3)

[3358—]4. Same—Investment of funds—The said board of trustees may invest such funds or any part thereof, in the name of the board of trustees of the patrolmen's pension fund in such interest-bearing securities as may be approved by the said board of trustees, and all such securities shall be deposited with the treasurer and shall be subject to the order of said board of trustees. ('17 c. 196 § 4)

[3358—]5. Same—Retirement of injured patrolmen—Monthly payments—If any member of the fire insurance patrol of such city, village, or town, shall, while in the performance of his duty, become and be found upon examination by a medical officer, ordered by said board of trustees, to be physically or mentally permanently disabled by reason of service in such department so as to render necessary his retirement from service in said fire insurance patrol, said board of trustees shall retire such member from service in such fire insurance patrol. Upon such retirement, the said board of trustees shall order the payment to said disabled member of said fire insurance patrol, monthly, from such pension fund a sum not to exceed sixty dollars per month. ('17 c. 196 § 5)

[3358—]6. Same—Payments in case of death—If any member of such fire insurance patrol, shall, while in the performance of his duty, be killed or die, as the result of any injury received in the line of duty, or of any disease contracted by reason of his occupation, or if any member of such fire insurance patrol shall die from any cause while in said service, or during retirement, or after retirement, after twenty-two years' service, as hereinafter provided, and shall leave a widow or children under sixteen years of age, surviving, said board of trustees shall direct the payment from said pension fund of the following sum monthly, to wit:

To such widow, while unmarried, \$30.00; to the guardian of such minor child or children, \$6.00 for each of said children, until it, or they, reach the age of sixteen years. Provided, that there shall not be paid to a family of a

deceased member a total pension exceeding one-half of the monthly salary of said deceased member at the time of his decease, or, if a retired member, a sum not exceeding one-half the amount of the monthly salary of such retired member at the date of his retirement.

If, at any time, there shall not be sufficient money in such pension fund to pay each person entitled to the benefits thereof, the full amount per month as hereinbefore provided, then, and in that event, an equal percentage of such monthly payments shall be made to each beneficiary thereof until the said fund shall be replenished to warrant the payment in full to each of said persons. ('17 c. 196 § 6)

[3358—]7. Same—Relief or retirement—Pensions—Light duties, etc.—Any member of the fire insurance patrol of any city, village, or town, after becoming fifty years of age, and having served twenty-two years, or more, in such fire insurance patrol, of which the last two years shall be continuous, may make application to be relieved from such fire insurance patrol, or if he shall be discharged from such fire insurance patrol, the said board of trustees shall order and direct that such person shall be paid a monthly pension, not to exceed sixty dollars per month. And the said board, upon the recommendation of the superintendent or chief officer of the patrol provided for in this act, shall have the power to assign members of the fire insurance patrol, retired or drawing pensions under this act, to the performance of light duties in said fire insurance patrol. After the decease of such member, his widow, or minor child or children, under sixteen years of age, if any surviving, shall be entitled to the pension provided for in this act. But nothing in this or any other section of this act shall warrant the payment of any annuity to any widow of a deceased member of such fire insurance patrol after she shall have remarried. ('17 c. 196 § 7)

[3358—]8. Same—Present and future members—This act shall apply to all persons who are now, or shall hereafter become members of such fire insurance patrol, and all such persons shall be eligible to the benefits secured by this act. ('17 c. 196 § 8)

[3358—]9. Same—Duties of treasurer—Bond—The treasurer of the board of trustees shall be the custodian of said pension fund and shall secure and safely keep the same subject to the control and direction of the board, and shall keep his books and accounts concerning said fund in such manner as shall be prescribed by the board of trustees; and the said books and accounts shall always be subject to the inspection of the board of trustees or any member thereof. The treasurer shall, within ten (10) days after his election, or appointment, execute a bond to the board of underwriters, with good and sufficient security in such penal sum as the board shall direct, to be approved by the board of trustees. Conditions, for the faithful performance of the duties of his office and that he will safely keep, hold and truly account for all moneys and property which may come into his hands as such treasurer, and that upon the expiration of his term of office, he will surrender and turn over to his successor all unexpended moneys and all property which may have come into his hands as treasurer of such fund. Such bond shall be filed in the office of the board of underwriters, and in case of a breach of the same, or the conditions thereof, suit may be brought on the same in the name of such board of underwriters for the use of such board or of any person or persons injured by such breach. ('17 c. 196 § 9)

[3358—]10. Same—Moneys, how paid—Warrants—Interest—All moneys ordered to be paid from said pension fund to any person or persons shall be paid by the treasurer of said board only upon warrants signed by the president of the board, and countersigned by the secretary thereof, and no warrant shall be drawn except by order of the board of trustees and duly entered in the records of the proceedings of the board. In case the said pension fund, or any part thereof, shall, by order of said board of trustees or otherwise, be deposited in any bank, or loaned, all interest on money which may be paid or agreed to be paid on account of any such loan or deposit shall belong to and constitute a part of such fund. Provided, that nothing herein contained

shall be construed as authorizing said treasurer to loan or deposit such fund, or any part of such fund, unless so authorized by the board of trustees. ('17 c. 196 § 10)

[3358—]11. **Same—Report to board of underwriters**—The board of trustees shall make report to the board of underwriters, of such city, village, or town of the condition of such pension fund, as of the first day of June, of each and every year, at the annual meeting of said board of underwriters. ('17 c. 196 § 11)

[3358—]12. **Same—Exemption from civil process, etc.**—No portion of said pension fund shall either before or after its order of distribution by such board to such disabled members of said fire insurance patrol, or to the widow or guardian of such minor child or children of deceased or retired member of such fire insurance patrol, be held, seized, taken, subjected to, or detained, or levied on by virtue of any attachment, execution, injunction, writ interlocutory, or other order or decree, or any process or proceeding whatever issued of or by any court of this state for the payment or satisfaction in whole or in part of any debt, damages, claim, demand, or judgment against such member or his widow, or the guardian of said minor child or children of any deceased member, but the said fund shall be sacredly held, kept secure, and distributed for the purpose of pensioning the persons named in this act and for no other purpose whatever. ('17 c. 196 § 12)

INDEMNITY CONTRACTS

3362. **Declaration to be filed with commissioner**—Such subscribers so contracting among themselves shall through their attorney file with the insurance commissioner of this state a declaration verified by the oath of such attorney, setting forth:

(a) The name or title of the office at which such subscribers propose to exchange such indemnity contracts. Said name or title shall not be so similar to any other name or title previously adopted by a similar organization or by any insurance corporation or association as in the opinion of the insurance commissioner is calculated to result in confusion or deception.

(b) The kind or kinds of insurance to be affected or exchanged.

(c) A copy of the form of policy contract or agreement under or by which such insurance is to be affected or exchanged.

(d) A copy of the form of power of attorney or other authority of such attorney under which such insurance is to be effected or exchanged.

(e) The location of the office or offices from which such contracts or agreements are to be issued.

(f) That applications have been made for indemnity upon at least one hundred separate risks aggregating not less than one and one-half million (\$1,500,000.00) dollars, as represented by executed contracts or bona fide applications, to become concurrently effective, or, in case of liability or compensation insurance, covering a total pay roll of not less than one and one-half million (\$1,500,000.00) dollars.

(g) That there is on deposit with such attorney and available for the payment of losses a sum of not less than twenty-five thousand (\$25,000.00) dollars.

Provided, however, that in case of employers' liability or workmen's compensation insurance all subscribers shall be engaged in the same class of business and have an annual pay roll in Minnesota of not less than four million (\$4,000,000.00) dollars and a deposit with such attorney and available for the payment of losses of not less than one hundred thousand (\$100,000.00) dollars.

Provided further, that in the case of automobile liability insurance, covering damage to persons or property of others, the subscribers to such contracts shall have on deposit with such attorney and available for the payment of losses not less than one hundred thousand (\$100,000.00) dollars. (Amended '17 c. 352 § 1)

3365. Same—Reserve to be maintained—Revocation of license—There shall at all times be maintained as a reserve a sum in cash or convertible securities equal to fifty per cent of the net annual deposits collected and credited to the accounts of the subscribers on policies in force having one year or less to run and pro rata on those for longer periods. Net annual deposits shall be construed to mean the advance payments of subscribers after deducting therefrom the amounts specifically provided in the subscribers' agreements, for expenses. Said sum shall at no time be less than twenty-five thousand (\$25,000.00) dollars, and if at any time fifty per cent of the deposits so collected and credited shall not equal that amount, then the subscribers shall make up any deficiency.

In case of the failure of any such reciprocal or inter-insurance exchange to comply with any of the provisions of this act, it shall be the duty of the insurance commissioner to immediately declare its license revoked, and in case of such revocation, said reciprocal or inter-insurance exchange shall not be again licensed to transact business in this state for the period of one year from the date of such revocation. (Amended '17 c. 352 § 2)

TOWN AND FARMERS' MUTUAL COMPANIES

3383. Township mutual fire insurance companies, etc.—It shall be lawful for any number of persons, not less than twenty-five (25), residing in adjoining towns in this state, who shall collectively own property worth at least fifty thousand (\$50,000.00) dollars, to form themselves into a company or corporation for mutual insurance against loss or damage by fire or lightning. No such company shall operate in more than fifty (50) towns in the aggregate at the same time.

Provided, that where any such company confines its operations to one county it may transact business in the whole thereof by so providing in its certificate of incorporation. (Amended '15 c. 155 § 1)

3395. Same—Property insurable—No township mutual fire insurance company heretofore organized and no company organized pursuant to this act shall insure any property outside of the limits of the town or towns in which such company is authorized by its certificate or articles of incorporation to transact business, except personal property temporarily outside of such authorized territory and except as hereinafter further provided; nor shall any township mutual fire insurance company insure any property other than dwellings and their contents, farm buildings and their contents, live stock, farm machinery, automobiles, country store buildings, threshing machines, farm produce anywhere on the premises, churches, school houses, society and town halls, country blacksmith shops and their contents, parsonages and their contents, and the barns and contents used in connection therewith, butter-makers' dwelling houses and contents, and barns and contents used in connection therewith.

No such company shall insure any property within the limits of any city or village except that located upon lands actually used for farming or gardening purposes, but whenever the dwelling house of any person insured is within the limits of a town where the company is authorized to do business, and the farm on which such dwellings are situated is partly within and partly without such town, it may include in such insurance any outbuildings, farm produce, stock or other farm property on such farm outside of such limits.

No law relating to insurance companies now in force in this state shall apply to township mutual fire insurance companies unless it shall be expressly designated in such law that it is applicable to such companies. ('09 c. 411 § 13, amended '13 c. 80 § 3; '15 c. 107 § 1)

[3412—]1. Township mutual fire insurance companies may have perpetual existence—The corporate existence of any township mutual fire insurance company heretofore or hereafter organized may be made perpetual by so providing in its articles of incorporation. ('17 c. 228 § 1)

[3412—]2. **Township mutual companies to insure against death of horses and cattle**—It shall be lawful for any number of persons, not less than twenty-five, residing in adjoining towns in this state, who shall collectively own property worth at least fifty thousand dollars (\$50,000.00), to form themselves into a company or corporation for mutual insurance against loss by death of horses and cattle, but no such company shall operate in more than fifty towns in the aggregate at the same time. Provided, that where any such company confines its operations to one county, it may transact business in the whole thereof by so providing in its certificate of incorporation. ('17 c. 332 § 1)

[3412—]3. **Same—How organized, etc.**—Every such company shall be organized in the same manner as is now provided by law for the organization of township mutual fire insurance companies and shall be subject to all laws relating to such companies and possessed of similar powers, but it shall not have power to insure against loss or damage other than by death of horses or cattle. ('17 c. 332 § 2)

MUTUAL HAIL, TORNADO, ETC., COMPANIES

3414. **Limit of premiums and assessments—**

A mutual hail and cyclone insurance company is required to make assessments for loss and expenses upon all members liable thereto, pro rata, and assessments which levy a greater rate on members in one locality than those in another cannot be enforced (126-245, 148+305). Insurance, §=191.

3418. **What property insured—Limit of expenses**—No such company shall insure any other property than country churches and school houses, farm dwellings, barns, and other buildings, and hay, grain and other farm products therein, or stored or growing on the premises, bedding, wearing apparel, printed books, pictures and frames, household furniture, family stores and provisions while therein or in the cellar beneath, farm implements, vehicles and machinery on or off the premises, threshing machines, or live stock thereon or running at large. No company, in its hail department, shall insure more than 3,200 acres in any one township; there shall be at least one-half mile between each risk assumed by such company, except that risks may be assumed which cover the growing crops upon not more than 320 acres of contiguous or immediately adjacent lands. No such company shall incur, lay out or expend, in any one calendar year, as and for the expenses of conducting such business, more than its application or survey fees and forty (40) per cent of its total premiums or assessments actually collected. But no company shall be required to limit its annual expenses to less than one thousand dollars (\$1,000). (Amended '15 c. 106 § 1)

3420. **Guaranty surplus fund—Dividends, etc.**—Every such company shall create and maintain a guaranty surplus fund and shall annually set aside and credit thereto, on the day its annual assessment falls due, all the income of the preceding year in excess of the amount required for the payment of its losses and its legal expenses. Whenever such fund has to its credit \$120,000, the directors shall by resolution declare a dividend to its members of \$20,000 thereof. The remaining \$100,000 shall be invested according to law. Provided, however, that any company organized exclusively to write insurance against loss or damage by cyclone, tornado and windstorm, or any one or more of them, upon the mutual plan, which has heretofore in accordance with law or otherwise established and maintained such guaranty surplus fund, may hereafter use the same for the payment of its losses and expenses in the same manner as any other funds of such company available for that purpose and that such company need not hereafter create or maintain such guaranty surplus fund. (Amended '15 c. 106 § 2)

TITLE AND FIDELITY COMPANIES

3431. **Capital—Guaranty**—The capital stock of every real estate title insurance company shall not be less than \$200,000.00, and before issuing any policy or other contract of guaranty or insurance, it shall set apart and keep

separate not less than two-fifths thereof, and not less than \$100,000.00 in any case as a guaranty fund, and invest the same according to law, and the securities in which said guaranty fund is invested shall be duly deposited with the commissioner of insurance for Minnesota, and his certificate thereof procured as provided by law. Such deposit shall be maintained unimpaired, and the principal of such fund shall be applied only to the payments of losses and expenses by reason of its guaranty and insurance contracts, with the right to the company to collect the income thereof and to substitute other like securities of equal amount and value from time to time. After the investment of such portion of its capital stock as hereinbefore provided, and the deposit of the securities in its guaranty fund as aforesaid, the remainder of its capital stock may be invested in such securities, records, abstract plants and equipment as the board of directors of such company shall determine to be suitable for the transaction of its business, and in addition to the powers now possessed, such companies are authorized to make abstracts of title to real property for compensation. Two-fifths of every increase of capital shall be likewise set apart and added to such fund so that the same shall always be at least two-fifths of its entire capital, and it shall make no contract of guaranty or insurance when it is less. (Amended '15 c. 196 § 1)

EMPLOYERS' MUTUAL LIABILITY INSURANCE ASSOCIATIONS

3442. Time of commencing business—Such associations shall not begin to issue policies until a list of the subscribers, with the number of employees of each which, in the aggregate must number in the aggregate, not less than five thousand, together with such other information as the commissioner of insurance may require, shall have been filed at the insurance department, nor until the president and secretary of the association shall have certified under oath that every subscription in the list so filed is genuine and made with an agreement of all the subscribers that they will take the policies subscribed for within thirty (30) days of the granting of a license by the commissioner of insurance; provided that in case of associations organized exclusively for the purpose of insuring creameries and cheese factories, such associations may begin to issue policies when the number of employees insured aggregates three hundred. ('13 c. 122 § 4, amended '15 c. 65 § 1)

3448. Issuance of policies to cease, when—If at any time the number of subscribers falls below twenty, or the number of the subscribers' employees within the state falls below five thousand, no further policies shall be issued until the total number of subscribers amounts to not less than twenty, whose employees within the state are not less than five thousand. Provided, that in case of associations, organized for the purpose of insuring creameries and cheese factories the number of subscribers must not fall below two hundred nor the number of subscribers' employees within the state below three hundred. ('13 c. 122 § 10, amended '15 c. 65 § 2)

3450. Premiums—Liability of members—Every such company shall charge and collect on each policy a premium, equal to one year's premium on the policy issued, and shall state in the policy the estimated annual premium and shall also provide in its by-laws for the determination of the actual premium and for payment of same when determined. The premium thus determined shall be known as the annual premium on the policy. And such company shall also provide in its by-laws and specify in its policies the maximum contingent mutual liability of its members for the payment of losses and expenses not provided for by its cash fund. The contingent liability of a member shall not be less than a sum equal to and in addition to one annual premium, nor more than a sum equal to five times the amount of such annual premium, or, in case of a policy written for less than one year, the contingent liability shall not be less than the proportionate fractional part of such annual premium nor more than five times the proportionate fractional part of such annual premium. The contingent liability of the policyholder shall be plainly and legibly stated in each policy as follows:

"The maximum contingent liability of the policyholder under this policy shall be a sum equal to annual premium (or "premiums.") (Amended '17 c. 201 § 1)

3451. Powers and duties of directors—Premiums—The board of directors shall determine the amount of premiums which the subscribers of the association shall pay for their insurance, in accordance with the nature of the business in which such subscribers are engaged, and the probable risk of injury to their employees under existing conditions, and they shall fix premiums at such amounts as in their judgment shall be sufficient to enable the association to pay to its subscribers all sums which may become due and payable to their employees under provisions of law, and also the expenses of conducting the business of the association. In fixing the premium payable by any subscriber, the board of directors may take into account the condition of the plant, work-room, shop, farm or premises of such subscriber in respect to the safety of those employed therein, as shown by the report of any inspector appointed by such board, and they may from time to time change the amount of premiums payable by any of the subscribers as circumstances may require, and the condition of the plant, work-room, shop, farm or premises of such subscribers in respect to the safety of their employees may justify and they may increase the premiums of any subscriber neglecting to provide safety devices required by law, or disobeying the rules or regulations made by the board of directors in accordance with the provisions of section 11 (3449) of this act. (Amended '17 c. 201 § 2)

3453. Statement to be filed with insurance department—A statement of any proposed distribution of subscribers into groups shall be filed with the insurance department. (Amended '17 c. 201 § 3)

3458. Foreign associations—Any mutual employers' liability insurance association of another state, upon compliance with all laws governing such corporations in general, the provisions of Section 1705, Revised Laws of 1905 [3591], and the provisions of this act, may be admitted to transact business in this state. Such associations shall pay to the department of insurance the fees prescribed by Section 9, Chapter 386, Laws of 1911 [3248].

Whenever the contracts of insurance issued by such associations shall cover in the aggregate less than five thousand employees, or in the case of associations organized for the purpose of insuring creameries and cheese factories less than three hundred employees, the assured shall forthwith notify the commissioner of insurance of such fact and if, at the expiration of six months from said notice, the aggregate number of employees covered by said contracts of insurance shall be less than five thousand, or in the case of associations organized for the purpose of insuring creameries and cheese factories less than three hundred employees, the commissioner of insurance shall revoke the license of such association and shall petition the district court for the appointment of a receiver for the purpose of winding up its affairs. ('13 c. 122 § 20, amended '15 c. 65 § 3)

LIFE INSURANCE COMPANIES

3467. Misstatement, when not to invalidate policy—

In an action on an accident policy § 3300 controls, and not this section, the policy having been written and the accident having occurred prior to the time that Laws 1913, c. 156, post, §§ 3522-3535, took effect, section 3527 proving what shall be the effect of a false statement in an application for an accident policy (134-192, 158+967). Insurance, § 250(1).

Reasonableness of by-law of fraternal beneficiary insurance order as to effect of misstatement of age in application for membership, considered (123-145, 143+265). Insurance, § 693, 723(3, 4).

3477. Policies in form other than as provided in section 3471—Provisions required—

A material misrepresentation, made with intent to deceive, avoids the policy; but where such intent is not present the policy is not invalid, unless the risk of loss is thereby increased, and an immaterial misrepresentation, though made with intent to defraud, does not avoid the policy (123-453, 144+218, Ann. Cas. 1915A, 458). Insurance, § 250(1).

3485. Person soliciting—Agent—

Cited (181+217).

Knowledge of the agent, through whom the insurance was effected, of the actual situation of the risk covered by its burglary insurance policy is the knowledge of the company, and estops it from denying that the property so situate is not insured (125-54, 145+622). Insurance, ~~§~~378(1).

This section has no application in a case where plaintiff is seeking to enforce an oral contract of insurance, a written policy not having been delivered to insured under his written application taken by a soliciting agent (131-147, 154+745). Insurance, ~~§~~92.

3495. Default in payment of premium—Rights of insured—

Value of policy held to exceed amount of loan (121-395, 141+518, Ann. Cas. 1914D, 160). Insurance, ~~§~~179½.

Where policy is improperly forfeited, insured may sue on the policy, and need not sue for conversion (121-395, 141+518, Ann. Cas. 1914D, 160). Insurance, ~~§~~237.

3496. Provisions not waived—

Stipulation for forfeiture on default in payment of loan held invalid (121-395, 141+518, Ann. Cas. 1914D, 160). Insurance, ~~§~~179½.

CO-OPERATIVE LIFE AND CASUALTY COMPANIES

3504. Reserve fund—Reciprocal provisions—Every domestic co-operative life or casualty corporation, society, or association except fraternal beneficiary associations, which issues a certificate or policy, or makes an agreement with its members, by which, upon the decease of a member, more than two hundred (200) dollars is to be paid to, or benefit conferred upon the legal representatives or designated beneficiary of such member, shall set aside ten (10) per cent of its gross premium receipts or assessments each year, as a reserve, until the same, together with any reserve already accumulated, shall amount to the sum of twenty-five thousand (25,000) dollars.

Every domestic co-operative or assessment company transacting the business of life and health and accident insurance, which does not issue health and accident policies providing indemnity for disability from accident or disease in excess of seven hundred fifty (750) dollars on account of any one accident or illness, nor issues policies providing indemnity for disability from accident or illness in excess of seven hundred fifty (750) dollars on account of any one accident or illness and death indemnity of more than two hundred (200) dollars, shall set aside as a reserve ten (10) per cent of its gross premium receipts or assessments each year until the same, together with any reserve already accumulated, shall amount to two thousand (2,000) dollars, and shall thereafter set aside as a reserve five (5) per cent of its gross premium receipts or assessments each year until the same, together with any reserve already accumulated, shall amount to twenty-five thousand (25,000) dollars.

Every domestic co-operative or assessment life insurance corporation, society or association, which issues a certificate or policy, or makes an agreement with its members, by which upon the decease of a member, a funeral benefit is to be paid or funeral service is to be furnished, not exceeding two hundred (200) dollars in amount or value, shall set aside ten (10) per cent of its gross premium receipts or assessments each year as a reserve, until the same, together with any reserve already accumulated, shall amount to the sum of five thousand (5,000) dollars, which said reserve fund accumulated as herein provided, shall be deposited with the commissioner of insurance of the State of Minnesota for the benefit of all its policy-holders.

Such deposit may consist of securities of the class in which insurance companies are authorized to invest under the laws of this state and the company depositing the same shall be entitled to the income derived from such securities. No foreign insurance company upon the co-operative or assessment plan shall hereafter be permitted to transact business in this state unless it makes the deposit hereinbefore required of domestic companies except that where by the laws of the state under which said foreign company is organized it is permitted to and actually does maintain for the benefit of all its policyholders a deposit with some proper officer of such state of an amount equal to the deposit required by this act; the deposit with such other state shall be a

sufficient compliance with the provisions of this section: No deposit of securities other than that herein provided for shall be required of any such co-operative or assessment company. Any company transacting the business of life insurance, upon the co-operative or assessment plan, and creating and maintaining a greater reserve than herein provided for, may elect by written stipulation, filed with the commissioner of insurance, to keep on deposit with the commissioner its entire reserve and special benefit funds, other than mortuary funds; and thereafter said entire reserve and special benefit funds shall be deposited with said commissioner in securities of like character and upon the same terms as provided herein for the deposit of the reserve required by this Section. ('07 c. 318 § 3, amended '11 c. 211 § 1; '15 c. 365 § 1)

3514. Beneficial and fraternal associations—

On death of a member of a beneficial association, whose certificate, payable to his mother, was dated prior to the enactment of this statute, held, that where the mother predeceased the member, the proceeds went to the member's brother and sister, they being his only heirs, there being no provision in the certificate as to disposition in case of the death of the beneficiary, and the constitution and by-laws of the order not being in evidence. In such case the brother and sister take as beneficiaries and not as heirs, and there being no provision in the certificate for payment to an administrator, a special administrator of the deceased member could not stand in the position of trustee to the brother and sister, and payment to such administrator did not release the insurance order. The brother and sister held not estopped to assert that the special administrator was unauthorized to receive the money, by the fact that they joined in the petition for his appointment, nor were they barred by laches by having delayed for several years in bringing suit on the certificate after its proceeds had been paid to the special administrator (122-221, 142+316). Insurance, ~~§~~796.

The by-laws of an association having provided that policies may be made payable to the affianced wife of the insured, a policy so payable is valid, though the object of the association, as stated in its constitution, is to provide insurance for the surviving relatives of its members (127-225, 149+288, Ann. Cas. 1916C, 584). Insurance, ~~§~~771.

[3515—]1. Co-operative or assessment casualty companies—Reserve—No casualty company or association organized under the co-operative or assessment laws of this state not having a reserve of at least \$25,000.00 on deposit with the commissioner of insurance of this state shall issue policies or contracts providing for the payment of endowments of any kind. ('15 c. 318 § 1)

LIFE, ACCIDENT AND HEALTH COMPANIES

3518. Same—Notice—Consolidation and reinsurance—The insurance commissioner shall thereupon issue an order requiring notice to be given by mail to each policyholder of such company of such petition, and the time and place at which hearing thereon will be held, and shall publish the said notice in five daily newspapers, once in each week for at least two weeks before the time appointed for the hearing upon said petition.

In lieu of proceeding under the foregoing paragraph of this section and section 2 of Chapter 303, Laws of 1905 [3517], any accident or health company, may consolidate and enter into a contract of reinsurance with any other company by filing with the commissioner of insurance a copy of such contract and all papers relating thereto, which consolidation and reinsurance shall take effect upon such filing and the mailing to each person holding a policy so reinsured a notice thereof. Provided, that if the holders of not less than five per cent of such policies so reinsured shall within thirty days thereafter file a petition with the commissioner of insurance for a hearing on the question of such reinsurance, the commissioner shall, and without such petition may, order a hearing as provided in section 4, Chapter 303, Laws of 1905 [3519], notice of which shall be given by the company by mail to each holder of such policy, so reinsured, at least ten days before such hearing, and thereupon proceedings shall be had as provided in sections 4 and 5, Chapter 303, Laws of 1905 [3519, 3520]. ('05 c. 303 § 3, amended '15 c. 333 § 1)

3519. Same—Hearing and determination—

125-390, 147+281.

3520. Same—Costs and expenses—No extra compensation—All actual expenses and costs incident to proceedings under the provisions of this act shall be paid by the company or companies bringing said petition, and an

itemized statement of the expenses and costs shall be filed with the insurance commissioner with a certified copy of the decision of the commissioner. No officer of any such company or companies, nor member of said commission, or employé of the State Insurance Department, shall receive any compensation, gratuity or otherwise, directly or indirectly, for in any manner aiding, promoting or assisting in such consolidation or reinsurance. ('05 c. 303 § 5, amended '15 c. 333 § 2)

3527. Same—False statements—

In an action on an accident policy written prior to the taking effect of this act, the accident for which a claim was made having occurred prior to that time, the provisions of § 3300 control, and not those of § 3467 (134-192, 158+967). Insurance, § 250(1).

3535. Same—When to take effect—

134-192, 158+967; note under § 3527, ante. Insurance, § 250(1).

3536. Policies of associations confining membership to commercial travelers, etc.—Copies to be attached and mailed, etc.—By-laws—Any domestic assessment, health or accident association now licensed to do business in this state, which confines its membership to commercial travelers, professional men, and others whose occupation is of such character as to be ordinarily classified as no more hazardous than commercial travelers, and which does not pay commissions or other compensation for securing new members, may issue certificates of membership which, with the application of the member and the by-laws of the association shall constitute the contract between the association and the member. A printed copy of the by-laws and a copy of the application shall be attached to the membership certificate when issued, and a copy of any amendment to the by-laws shall be mailed to the members following their adoption. Certified copies of certificate, by-laws, and amendments shall be filed with the commissioner of insurance and subject to his approval. The by-laws shall conform to the requirements of chapter 156, Laws of 1913 [3522-3535], so far as applicable, and wherever the word "policy" appears in said act, it shall for the purpose of this act be construed to mean the contract as herein defined. (Amended '17 c. 183 § 1)

FRATERNAL BENEFICIARY ASSOCIATIONS

3537. Fraternal beneficiary associations defined—Branch system, etc.—Any corporation, society, order or voluntary association without capital stock organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge system with ritualistic form of work and representative form of government and which shall make provision for the payment of death or disability benefits, or both, is hereby declared to be a fraternal beneficiary association; provided that any beneficiary society or association, whose membership is confined to the members of any one religious denomination shall only be required to have a branch system and a representative form of government. Such beneficiary society or association shall be governed by the provisions of chapter 345 of the General Laws of 1907 [3537-3567], and be exempt from all provisions of the insurance laws of this state to the same extent as fraternal beneficiary association. ('07 c. 345 § 1, amended '15 c. 96 § 1)

Sections 3537-3539, requiring fraternal societies to have representative form of government, is not contravened by constitutional provision that jurisdictions must have reasonable minimum of members before representation in supreme council (162+513). Insurance, § 697.

3538. Same—Associations operating under lodge system, etc.—Any association having a supreme governing or legislative body and subordinate lodges or branches by whatever name known into which members shall be elected, initiated and admitted in accordance with its constitution, laws, rules, regulations, and prescribed ritualistic ceremonies, which subordinate lodges or branches shall be required by such association to hold regular or stated meetings at least once in each month, shall be deemed to be operating under the lodge system; provided that any beneficiary society or association, whose membership is confined to the members of any one religious denomination,

shall not be required to have ritualistic form of work or ceremonies. ('07 c. 345 § 2; amended '15 c. 96 § 2)

See note under § 3537.

3539. Same—When association deemed to have representative form of government—

See note under § 3537.

3542. Same—Who are beneficiaries—

Rules of an order, providing that benefits can be only in favor of "members of his family, or blood relatives, or mutually for husband and wife," did not prevent a married man from designating his father as his beneficiary; and subsequent marriage did not, ipso facto, work a substitution of the wife as the beneficiary in place of the father (122-273, 142+333, 49 L. R. A. [N. S.] 141, Ann. Cas. 1914D, 1123). Insurance, ¶774.

A change of beneficiaries can be effected only in the manner provided by the by-laws of the order. A mere delivery of the certificate to a person other than the designated beneficiary does not operate as a change of beneficiary (122-373, 142+333, 49 L. R. A. [N. S.] 141, Ann. Cas. 1914D, 1123). Insurance, ¶784(1).

The term "family" is not to be given a restricted construction, and may include stepchildren or stepfather. An adopted child does not always mean one adopted through statutory proceedings, and may apply to one received into insured's family (130-416, 153+853, L. R. A. 1916B, 901). Insurance, ¶726, 770, 771.

3544. Same—Certificate shall specify, what—Changes in constitution, etc.

Cited and applied (129-137, 151+905, Ann. Cas. 1916E, 486). Insurance, ¶718(4).

A by-law adopted subsequent to the issuance of a benefit certificate, limiting the time in which to sue on the certificate, was void as to such certificate, though the certificate provided that it should be governed by the existing by-laws or any thereafter adopted; no notice having been given to the certificate holder of the enactment of such by-law (122-310, 142+331). Insurance, ¶812.

A by-law passed after a benefit certificate was issued, and changing the limit of time for suing on the certificate, is not binding on the certificate holder or the beneficiary; this section not applying to benefit certificates issued before its enactment (124-431, 145+118). Insurance, ¶719(1).

The beneficiary certificate of a fraternal order may be received in evidence without offer of the application, the medical examination, or the laws of the order, though these documents form part of the contract between the member and the order by virtue of this section (130-329, 153+742). Insurance, ¶818(1).

Validity and operation of by-laws of beneficial association as to expulsion of members (see 128-51, 150+173). Insurance, ¶747, 757.

3553. Same—License, requirements for, etc.—No foreign association which is not now authorized to transact business in this state shall transact any business herein without a license from the insurance commissioner. Before receiving such license, it shall file with the insurance commissioner a duly certified copy of its charter or articles of association; a copy of its constitution and laws, certified by its secretary or corresponding officer; a power of attorney to the insurance commissioner as hereinafter provided; a statement under oath of its president and secretary or corresponding officers in the form required by the insurance commissioner duly verified by an examination made by the supervising insurance official of its home state of the business for the preceding year; a copy of its contract, which must show that benefits are provided for by assessments upon, or other payments by persons holding similar contracts, and shall furnish the insurance commissioner with such other information as he may deem necessary to a proper exhibit of its business and plan of working, and if he finds that it is transacting business in accordance with the provisions of this act; that its assets are invested in accordance with the laws of the state where it is organized; and unless it has under its jurisdiction, a grand lodge having a beneficiary department which grand lodge is now authorized by the insurance commissioner to transact business in this state, that it has the membership and qualifications required of domestic associations organized under this act, he may license such association to do business in this state until the first day of the succeeding March, and such license may be renewed annually, but in all cases to terminate on the first day of the succeeding March; provided, that any beneficiary society or association, having a branch system and representative form of government, whose membership is confined to the members of any one religious denomination, and who, prior to the passage of Chapter 345 of the General Laws of nineteen hundred and seven (1907) [3537-3567] was, and has been ever

since continuously licensed to do business in this state, may, upon being authorized to transact the business provided for in the laws governing fraternal beneficiary associations in the state of its organization and making such changes, if any, in its charter and plan of business as may be necessary to meet the requirements of said chapter 345 of the General Laws of nineteen hundred and seven (1907) [3537-3567], be licensed to do business in this state under said chapter without being required to adopt the rates required by the national fraternal congress table of mortality. ('07 c. 345 § 17, amended '11 c. 226; '15 c. 96 § 3)

3555. Same—Foreign associations—Appointment of attorney—Service of process—Time to answer—

Where a foreign insurance corporation files the writing provided for by this section, it becomes a part of policies issued within the state, and suit can be maintained by service on the insurance commissioner, whether the corporation continues to do business in the state or not; and if it transferred its business to another foreign corporation, the latter company may be sued in this state under the authorization on one of the policies so written (133-8, 157+721). Insurance, §814.

A Colorado beneficiary association consolidated with a like association of Nebraska, which had previously assumed a policy issued to a resident of this state by a prior Iowa association authorized to transact business in this state, and such Colorado association assumed the policy in question and collected dues thereon. Held, that such Colorado association was estopped to set up its failure to comply with this section as to appointment of the insurance commissioner for the service of process upon it; such assumption of liability constituting the transaction of business in this state (131-131, 154+748). Insurance, §16, 814.

Where the summons required defendant to answer within 20 days from service, and judgment by default was entered 22 days after service, held, that the judgment was not binding on defendant and must be set aside (124-390, 145+171). Insurance, §814.

3558. Same—Amendments of constitution to be filed—Copies as evidence—

Cited (162+513).

A by-law held properly excluded, because not properly authenticated, and not shown to have been in force at the time involved (125-150, 145+808). Evidence, §370(1).

FOREIGN COMPANIES

3591. Requirements—Certificate—

As to service of process on insurance commissioner (see 162+461).

3598. Trustees appointed, when—

130-342, 153+745.

3601. [Repealed.]

See § [3601—]21.

[3601—]1. **Agents—Licenses—**No person shall act or assume to act as an insurance agent or broker in the solicitation or procurement of applications for insurance, nor in the sale of insurance or policies of insurance, nor in any manner aid as an insurance agent or broker in the negotiation of insurance by or with any insurance company or association, except fraternal beneficiary associations and township mutual companies, until such person shall have obtained from the commissioner of insurance a license therefor. ('15 c. 195 § 1)

[3601—]2. **Same—Application—**A license to any person to act as agent for any insurance company or association shall only be granted by the commissioner of insurance upon the written application by such company or association upon forms prescribed by the commissioner of insurance and the payment of the fee required by law. Such licenses shall be issued for the term ending on the first day of March thereafter. ('15 c. 195 § 2)

[3601—]3. **Same—Form of application—**A license to act as insurance broker shall only be granted by the commissioner of insurance upon application made in writing and verified by oath by the person seeking such license and the payment of the fee required by law; and such application shall be in the form prescribed by the commissioner of insurance and shall give a statement of the occupations in which the applicant has been engaged for the preceding five years. ('15 c. 195 § 3)

[3601—]4. **Same—"Insurance broker" defined**—Whosoever, not being the appointed agent or officer of the insuring company, acts for another person, firm or corporation, or in any manner aids another person, firm or corporation, for compensation or profit, in effecting or in procuring insurance or in placing or securing insurance or in the purchase of insurance; or whosoever, not being the appointed agent or officer of the insuring company, procures a policy of insurance to be issued to or on behalf of another person, firm or corporation, or procures insurance to be effected or placed for or on behalf of another person, firm or corporation, at the request of or with the consent of such other person, firm or corporation, and collects, receives or accepts in money, or other thing of value, or gives credit for, the whole or any part of any premium, policy fee, or assessment on or for such policy of insurance, and does not forthwith pay or deliver the whole thereof over to the company or its agent entitled thereto issuing such policy or effecting such insurance, shall be deemed an insurance broker. Such broker's license shall be issued and be in force for one year from its date of issue unless revoked or suspended by the commissioner of insurance. ('15 c. 195 § 4)

[3601—]5. **Same—License to be denied in what cases—Power of commissioner**—No person shall be licensed by the commissioner of insurance as an insurance agent or broker if the commissioner of insurance shall be satisfied that such person is incompetent or unqualified to act as such insurance agent or broker; or that such person does not in good faith intend to carry on the business of insurance agent or broker; or that such person is untrustworthy; or that such person has unreasonably failed to pay over to any insurance company, agent or broker, or policyholder or member of any insurance company or association entitled thereto the whole or any part of any premium or return premium, or moneys or other thing of value in his hands, arising out of any insurance transaction, and due or payable to or belonging to any policyholder or other person, firm or corporation; or that such person has wilfully misrepresented to any person, firm or corporation the terms or conditions of any policy or contract of insurance or the financial standing or condition or manner of doing business of any insurance company or association, agent or broker; or that such person has deceived or defrauded, or attempted to deceive or defraud any person, firm or corporation in connection with any insurance transaction; or that such person has been dishonest in connection with any insurance transaction; or that such person has urged or procured any person, firm or corporation to lapse any policy or contract of insurance in any company or association which is now or has been licensed to do business in the state to the damage of such person, firm or corporation; or that such person has violated any of the provisions of the laws of this state in any way relating to insurance or the transaction or negotiation of insurance, or insurance agents, or brokers, or any lawful ruling of the commissioner of insurance; or that such person is not of good moral character. ('15 c. 195 § 5)

[3601—]6. **Same—Revocation of license**—The commissioner of insurance may at any time revoke the license of any insurance agent or broker or suspend the same for not less than thirty (30) days if he shall be satisfied that any such licensee is not qualified under the provisions of the foregoing section, and he shall give such notice thereof as he deems will best protect the public. ('15 c. 195 § 6)

[3601—]7. **Same—Revocation on application of company**—The license of any person as agent for any insurance company shall likewise be revoked by the commissioner of insurance when written request therefor is made by such company. ('15 c. 195 § 7)

[3601—]8. **Same—Notice of revocation, etc.**—Notice of such revocation or suspension shall be given to such person by mail and shall be deemed complete if such notice is deposited in the mails, postage prepaid, directed to such person at his last-known place of residence as disclosed by the application for license on behalf of such person. Notice of such revocation or suspension or the refusal of an agent's license shall in like manner be given to the company

which applied therefor. Notice of the refusal of a broker's license shall in like manner be given the applicant therefor. ('15 c. 195 § 8)

[3601—]9. Same—Complaints against agent or broker—Hearing—Refusal, revocation or suspension of license—New application—The commissioner of insurance, when he deems it advisable, may require any complaint made against an insurance agent or broker to be in writing and sworn to by the person or persons making the same. When the commissioner of insurance shall deem it advisable, and in all cases where such person or company requests the same in writing, the commissioner of insurance shall grant a summary hearing in his office to determine whether or not such license shall be refused, revoked or suspended, and if an appearance shall not be made at such hearing, the license of the person applying for the same, or on whose behalf application for the same is made, shall be forthwith refused, revoked or suspended, as the case may be. Whenever the license of any agent or broker has been refused or revoked no new application for such license shall be entertained by the commissioner of insurance for one year thereafter and then only upon condition that such person shall file with the commissioner of insurance a good and sufficient bond in the sum of \$5,000.00 for the protection of the citizens of the state. ('15 c. 195 § 9)

[3601—]10. Same—Determination when license has expired, etc.—Upon proper complaint the commissioner of insurance may, in like manner, determine the unfitness of any person whose license as agent or broker has expired, or, in the case of an agent, has been revoked upon the request of the company for which he was licensed, to be thereafter licensed as insurance agent or broker, and record thereof shall be made as in the case of revocation, refusal or suspension of an agent's or broker's license. ('15 c. 195 § 10)

[3601—]11. Same—Record—The commissioner of insurance shall keep a record of the name and address of every person whose license as agent or broker has been refused, revoked or suspended, together with a brief statement of the reasons therefor and the facts connected therewith, which record shall be open to public inspection. ('15 c. 195 § 11)

[3601—]12. Same—Insurance companies prohibited from making application for license or keeping in employ unfit persons—No insurance company, its officers, agents or managers, shall knowingly make application to the commissioner of insurance for a license as agent on behalf of any person who is known to such company, its officers, agents or managers, making such application, to be unfit or disqualified to be licensed as an insurance agent as defined by the provisions of this act, and immediately upon the discovery by such company, its officers, agents or managers, having supervision of such agent, of such unfitness or disqualification such company or such officers, agents or managers shall forthwith request the commissioner of insurance in writing to revoke the license of such agent; nor shall any company retain in its employ any agent known by it to be disqualified or unfit to be licensed as an insurance agent as defined by this act. ('15 c. 195 § 12)

[3601—]13. Same—Appeals—Any person aggrieved by any ruling or order of the commissioner of insurance made under the provisions of this act, may appeal therefrom to any district court of the state by serving written notice of such intention upon the commissioner of insurance, specifying such court, within ten (10) days after the same is made. The commissioner of insurance shall thereupon file with the clerk of such court a certified copy of his order or ruling and findings of fact upon which the same are based, which shall be prima facie evidence of the facts therein stated. Thereupon the court shall summarily hear and determine the questions involved on said appeal. ('15 c. 195 § 13)

[3601—]14. Same—Attendance of witnesses, etc.—Investigations, how held—The commissioner of insurance shall have full power to summon and compel the attendance of witnesses before him to testify in relation to any matter which is, by the provisions of this act, or other provisions of the laws of this state relating to insurance, a subject of inquiry or investigation, and

may require the production of any book, paper or document deemed pertinent thereto. Such summons shall be served in the same manner and have the same effect as subpoenas from district courts of this state. All witnesses summoned shall receive the same compensation as is paid to witnesses in the district court, which shall be paid out of the contingent fund of the department of insurance upon proper vouchers for the same signed by the commissioner of insurance, and the commissioner of insurance shall, at the close of the hearing wherein such witness was subpoenaed, certify to the attendance and mileage of such witness, which certificate shall be filed with such vouchers. All investigations held by or under the direction of the commissioner of insurance may, in his discretion, be private, and persons other than those required to be present by the provisions of this act may be excluded from the place where such investigation is held, and witnesses may be kept separate and apart from each other and not allowed to communicate with each other until they have been examined. ('15 c. 195 § 14)

[3601—]15. **Same—Oaths**—The commissioner of insurance and his deputy are each hereby authorized and empowered to administer oaths and affirmations to any person appearing as witness before them; and false swearing in any matter or proceeding aforesaid shall be deemed perjury and shall be punished as such. ('15 c. 195 § 15)

[3601—]16. **Same—Contempt**—Any witness who refuses to be sworn, or who refuses to testify, or who disobeys any lawful order of said commissioner of insurance or his deputy, in relation to said investigation, or who fails or refuses to produce any paper, book or document touching any matter under examination, or who is guilty of any contemptuous conduct, after being summoned to appear before them to give testimony in relation to any matter or subject under examination or investigation as aforesaid, may be summarily punished by the said commissioner of insurance or his deputy, as for contempt by a fine in a sum not exceeding one hundred dollars. ('15 c. 195 § 16)

[3601—]17. **Same—Power of district court**—Disobedience of any subpoena in such proceeding, or contumacy of a witness, may, upon application of the commissioner of insurance, be punished by any district court in the same manner as if the proceedings were pending in such court. ('15 c. 195 § 17)

[3601—]18. **Same—No commissions to unlicensed agent**—No commission or other compensation shall be paid or allowed by any person, firm or corporation to any other person, firm or corporation acting or assuming to act as an insurance agent or broker without a license therefor. ('15 c. 195 § 18)

[3601—]19. **Same—Violation of act—Penalty**—Any person, firm or corporation violating or failing to comply with any of the provisions of this act, and any person who acts in any manner in the negotiation or transaction of unlawful insurance with an insurance company not licensed to do business in the state, or who as principal or agent violates any provision of law relating to the negotiation or effecting of contracts of insurance, shall be guilty of a misdemeanor. ('15 c. 195 § 19)

[3601—]20. **Same—Failure to appear or testify, etc.—Revocation of license**—The commissioner of insurance shall revoke the license of any agent or broker or officer, director, manager or other official of any insurance company refusing or neglecting to appear or testify at any hearing held before the commissioner of insurance, or failing or refusing to produce any books, papers or documents demanded by the commissioner of insurance, when such persons have been notified by the commissioner of insurance in writing to so appear and testify or produce books, papers or documents at such hearing. ('15 c. 195 § 20)

[3601—]21. **Same—Laws repealed**—Chapters 107 [3601], 223 [3605] and 514 [3297] of the Laws of 1913 are hereby repealed. ('15 c. 195 § 21)

PENALTIES

3603. Unlawful guaranty—Every director, officer or agent of an insurance company who officially or privately gives a guaranty to a policyholder thereof against an assessment for which he would otherwise be liable shall be guilty of a misdemeanor. (Amended '15 c. 84 § 1)

3604. Failure to appear before or obstructing commissioner—Whoever, without justifiable cause, neglects, upon due summons, to appear and testify before the commissioner as provided in this chapter, or obstructs the commissioner or his deputy in his examination of an insurance company, shall be guilty, for the first offense, of a misdemeanor, and for each subsequent offense of a gross misdemeanor. (Amended '15 c. 84 § 2)

3605. [Repealed.]

See § [3601—]21.

3606. Issue of prohibited life policies—Every officer or agent of a life insurance company who shall issue any policy in violation of any order or other prohibition by the commissioner, made pursuant to law, shall be guilty, for the first offense, of a misdemeanor, and for each subsequent offense of a gross misdemeanor. (Amended '15 c. 84 § 3)

3607. When agent of insurer—Procuring premiums by fraud—Every insurance agent or broker who acts for another in negotiating a contract of insurance by an insurance company shall be held to be the company's agent for the purpose of collecting or securing the premiums therefor, whatever conditions or stipulations may be contained in the contract or policy. Whenever any such agent or broker, by fraudulent representations, procures payment, or an obligation for the payment, of an insurance premium, he shall be guilty, for the first offense, of a misdemeanor, and for each subsequent offense of a gross misdemeanor. (Amended '15 c. 84 § 4)

3608. Penalty for violation on first and second offenses—Every person licensed to procure insurance in an unlicensed foreign company, who fails to file the affidavit and statement required in such case, or who wilfully makes a false affidavit or statement, shall forfeit his license and be guilty, for the first offense, of a misdemeanor, and for each subsequent offense of a gross misdemeanor. (Amended '15 c. 84 § 5)

One held to be an agent of a life insurance company, within the meaning of this section (127-215, 149+292).

One seeking to enforce an oral contract of insurance in a case in which a written policy was not delivered to insured under his written application delivered to a soliciting agent of the insurer (131-147, 154+745). Insurance, §=92.

3613. Failure to make report or comply with law—Every officer and agent of any insurance company, required by any provision of this chapter to make any report or perform any act, who shall neglect or refuse to comply with such requirement, and every agent, solicitor or collector of such corporation in this state who fails or neglects to procure from the commissioner a certificate of authority to do such business, or who fails or refuses to comply with, or violates, any provision of the insurance law, shall be guilty, for the first offense, of a misdemeanor, and for each subsequent offense of a gross misdemeanor. (Amended '15 c. 84 § 6)

3614. Other violations—Whoever violates any provision of the insurance law, where the nature of the offense is not specifically designated herein, shall be guilty, for the first offense, of a misdemeanor, and for each subsequent offense of a gross misdemeanor. (Amended '15 c. 84 § 7)

CHAPTER 20

INSPECTOR OF OILS

3619. Chief inspector of oils—Appointment—Salary—Bond—

This act is valid (134-101, 158+723).

Constitutionality of this act (see 132-138, 155+1035, L. R. A. 1916D, 193; note under § 3625).

3620. Deputies—

In view of this section, empowering the chief inspector to remove deputies at pleasure, the "old soldiers law" (§ 3976) is not applicable (131-190, 154+947). Officers, ~~§~~ 68.

3622. Inferior oils—Tests—Certificate—No person shall sell, or offer for sale, or use for illuminating purposes, any coal oil, or products thereof, unless the same has been inspected and branded as provided by this act; nor any that will ignite at a temperature below one hundred and twenty degrees Fahrenheit.

The instrument to be used in making tests shall be the "Tagliabue Open Cup;" and the gravity of said oils shall be determined by the "Tagliabue Standard Registered Hydrometer Beaume Scale" at a temperature of sixty degrees Fahrenheit, and said gravity shall be stenciled on each barrel or package containing said oil.

There shall be printed or stenciled on each tank wagon sale ticket car, can, cask, barrel or tank covering delivery of oil the following:

"This is to certify that the oil covered by this sale has a gravity test of _____ (This blank shall be filled in with the actual gravity test), and a fire test of not less than one hundred and twenty degrees and has been inspected and approved by the state oil inspector."

.....
(Name of person or corporation selling or furnishing same shall be signed, printed or stenciled on the above line.)

Provided, however, that it shall be deemed a full compliance with this act if said label or tank wagon sale ticket shows a Beaume gravity not higher than the actual Beaume gravity of the goods sold as determined by the "Tagliabue Standard Registered Hydrometer Beaume Scale" at a temperature of sixty degrees Fahrenheit.

Every person or corporation selling or delivering oil in bulk by means of portable tanks, shall, in lieu of the stamp or brand herein provided for, furnish and deliver to the purchaser a certificate as above set forth. (Amended '15 c. 271 § 1)

Cited (132-138, 155+1035, L. R. A. 1916D, 193).

3625. Gasoline—Tests—Certificate—For the purpose of this act, all gasoline, benzine and naphtha under whatever name called, held or offered for sale which may or can be used for illuminating, heating or power purposes, shall be deemed to be subject to the same inspection and control as provided for in this act for illuminating oils, except, that the inspectors are not required to test it other than to ascertain its gravity; and it shall be unlawful for any person, dealer or vendor to sell or offer for sale any gasoline, benzine or naphtha for any of such purposes, that has not been so inspected and approved.

All gasoline, benzine and naphtha shall be tested as to gravity in the same manner as oil, and shall be branded "Unsafe for illuminating purposes" and every barrel, cask, or package which contains gasoline, naphtha or benzine shall be labeled or branded with the word "Gasoline," "Naphtha" or "Benzine" as the case may be, in large letters at least two inches in size, and the gravity thereof shall be printed or stenciled on each barrel, can, cask, tank or other vessel covering deliveries of such gasoline, naphtha or benzine the following:

"This is to certify that the _____ (gasoline, naphtha or benzine as the case may be, shall be inserted in this blank) covered by this sale has a gravity

test of _____ (the actual gravity test to be inserted in this blank) and has been inspected and approved by the state oil inspector."

(Name of corporation or person selling or furnishing same shall be signed, printed or stenciled on the above line.)

Provided, however, that any person or corporation selling or delivering gasoline, benzine or naphtha in bulk by tanks shall, in lieu of the stamp or brand herein provided for, furnish and deliver to the purchaser a certificate as above set forth.

Provided, however, that it shall be deemed a full compliance with this act if the said label or tank wagon sale ticket shows a Beaume gravity not higher than the actual Beaume gravity of the goods sold as determined by the "Tagliabue Standard Registered Hydrometer Beaume Scale" at a temperature of sixty degrees Fahrenheit. (Amended '15 c. 271 § 2)

The provision of this section as to testing gasoline for gravity, and requiring it to be branded is a proper police measure, and is not unconstitutional (132-138, 155+1035, L. R. A. 1916D, 193). Explosives, ~~§~~2; Inspection, ~~§~~2, 3.

This act is not violative of Const. U. S. art. 1 § 10 cl. 2, prohibiting a state from laying duties on imports, except such as are necessary in the execution of its inspection laws, as that constitutional provision has reference to imports from foreign countries, and not to shipments from state to state (132-138, 155+1035, L. R. A. 1916D, 193). Commerce, ~~§~~77.

This section is intended to operate upon gasoline constituting a part of the common property of the state, and not upon that which is the subject of interstate commerce; and this act is an inspection law and not a revenue measure, and operates on all gasoline within the state, whether the same is the subject of interstate commerce or not (132-138, 155+1035, L. R. A. 1916D, 193). Commerce, ~~§~~50.

3626. Receptacles of petroleum products—Inspection—Books and records of transportation companies—Penalty—The inspector and his deputies are empowered and it is hereby made their duty to enter into or upon the premises of all wholesale and retail dealers in or any manufacturer, refiner or vendor of said illuminating oils, gasoline, benzine or naphtha and to inspect the receptacles in which said petroleum products are stored; and it is made the duty of all dealers in such petroleum products to keep such receptacles free from water and all other foreign substances; and if such inspector shall find or discover on said premises any oil, gasoline, benzine or naphtha, which shall not have been examined or tested and properly marked, stamped, sealed or branded he shall at once proceed to test and thereafter mark, stamp, seal or brand the same.

Every agent and employé of any railroad company or other transportation company having the custody of books or records showing the shipment of [or] receipt of the oils, gasoline, benzine or naphtha mentioned in this act shall give and permit the chief state inspector of oils and his deputies free access to such books and records for the purpose of determining the amount of oils, gasoline, benzine and naphtha shipped and [or] received. Any such agent or employé of any railroad company or other transportation company refusing or neglecting to comply with these provisions shall be guilty of a misdemeanor and shall be punished by a fine not to exceed fifty dollars or by imprisonment in the county jail not to exceed sixty days, or by both such fine and imprisonment. (Amended '15 c. 271 § 3)

Cited (132-138, 155+1035, L. R. A. 1916D, 193).

3628. Oil, gasoline, naphtha or benzine in tanks, etc.—Inspection before unloading—Oil, gasoline, naphtha or benzine shipped in tanks or tank cars shall not be unloaded until it is duly inspected, providing such inspection is made within twenty-four hours after the arrival and notice setting forth the number of the car and date of its arrival has been given the inspector. Each fifty gallons or major fraction thereof shall be considered a barrel in computing the inspection fees. No further inspection shall be necessary, and if such oil, gasoline, naphtha or benzine be afterwards placed in barrels, the person, firm or corporation so barreling same shall brand each barrel as hereinbefore provided (Amended '15 c. 271 § 4)

Cited (132-138, 155+1035, L. R. A. 1916D, 193).

This act is not invalid, as interfering with interstate commerce, on the theory that the oil, while in the tank cars, in the original package, is not subject to state regulation (134-101, 158+723, following 132-138, 155+1035, L. R. A. 1916D, 193). Commerce, ~~§~~50.

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3630. Fees—The fees for inspecting and branding shall be as follows:

1. For a single barrel or other receptacle containing not more than fifty gallons, forty cents.

2. If more than one and not more than ten such receptacles be inspected at one time and place, twenty-five cents for each.

3. If more than ten, fifteen cents for each additional barrel or receptacle, except as hereinafter provided.

4. Oil, gasoline, naphtha or benzine in tanks or tank cars containing more than fifty barrels five cents per barrel.

If the quantity in any one receptacle exceeds one barrel excepting where the same is in tanks or tank cars containing fifty barrels or more, five cents shall be charged for each fifty gallons thereof.

Such fees shall be payable at the time of the inspection.

Provided, that when oil, gasoline, benzine or naphtha is shipped outside of the state after inspection fees have been paid, the firm shipping same shall be given credit by the inspector for such fees.

And provided, further, that all kerosene oil, gasoline, benzine and naphtha inspected in other states where the inspection requirements are as high as those required herein, may be admitted without additional inspection on payment of the fees required by this act. (Amended '15 c. 271 § 5; '17 c. 331 § 1)

Cited (132-138, 155+1035, L. R. A. 1916D, 193).

3632. Adulterating illuminating or heating oil—False stamping, sealing, branding or marking—Refilling—Selling with false representation or without cancelling seal, etc.—Penalties—Any person, firm or corporation who shall personally, or by clerk or agent, wilfully adulterate any illuminating, or heating oil by adding thereto benzine, naphtha, or paraffine oil or any substance or thing whatever shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment in the county jail for not more than six months.

Any person, firm or corporation who shall personally, or by clerk, or agent, falsely stamp, seal, brand, or mark any cask, barrel, or other package or receptacle of oil, gasoline, benzine or naphtha, or who shall cause the changing, altering, or defacing in any manner any stamp, seal, brand, or device affixed to any cask, barrel or other package or receptacle of oil, gasoline, benzine or naphtha by any deputy inspector, or who shall refill or use any cask, barrel or other package or receptacle having a deputy inspector's seal, mark, stamp, or brand thereon without cancelling or defacing said seal, mark, stamp or brand and having the oil, gasoline, benzine or naphtha in such a cask, barrel or other package or receptacle properly examined or tested and stamped or marked under the provisions of this chapter, or who shall offer for sale, or who shall sell any such oil, gasoline, benzine or naphtha representing it to be in any respect other and different in quality or kind than as represented to the person so purchasing same, shall be liable to a fine of not less than five dollars nor more than five hundred dollars, or to imprisonment in the county jail for not more than six months, or to both such fine and imprisonment; and who shall sell or in any way dispose of any empty cask, barrel or other package or receptacle bearing a deputy inspector's seal, brand or stamp, without first thoroughly cancelling, defacing or removing such seal, brand, stamp, mark or any combination thereof, shall be liable to a fine of not less than five dollars nor more than five hundred dollars, or to imprisonment in the county jail not exceeding six months, or to both such fine and imprisonment.

Any person who shall violate any of the provisions of this act, not specifically mentioned in this section, shall be guilty of a gross misdemeanor. (Amended '15 c. 271 § 6)

Cited (132-138, 155+1035, L. R. A. 1916D, 193).

CHAPTER 21

INSPECTION OF FOOD AND OTHER ARTICLES

DAIRY PRODUCTS

3685. Same—License for “A 1” brand— * * *

3rd. The butter or cheese manufactured in such factories shall grade or score at least ninety-three points out of a possible hundred, according to the usual and accepted methods of judging and grading butter and cheese. For the purpose of obtaining such license such grade must have been made at least fifteen days prior to such application. ('13 c. 366 § 4 subd. 3, amended '15 c. 368 § 1)

3686. Same—License for “B” brand—Scoring necessary to continue use of brand.—No license shall be granted for the use of Minnesota brand or label grade B for the manufacture of butter or cheese unless all the requirements necessary for the manufacture of butter or cheese graded Minnesota A 1, as set forth in Section 4 of this act, shall have been complied with, excepting that the butter or cheese shall score at least ninety-two points out of a possible hundred, according to the usual and accepted methods of judging and grading butter and cheese, and shall not have fallen below ninety-two per cent more than three times in any year, and shall never fall below 92 per cent, and the factory in which such butter or cheese is manufactured must score at least 85 points; and the dairies supplying milk or cream to such factories shall score at least 50 points. And, further, cows from which milk or cream is produced need not be tested for tuberculosis. ('13 c. 366 § 5, amended '15 c. 368 § 2)

OTHER FOODS

3725–3727. [Repealed.]

See note under § [3727—]1.

[3727—]1. Compounds or chemical preservatives for canning—Manufacture or sale prohibited—It shall be unlawful for any person to manufacture for sale within the State of Minnesota any article to be used as a canning compound or chemical preservative in the canning and preserving of fresh fruits and vegetables which is adulterated within the terms of this act, nor shall any person add to, apply or use, in the process of canning fruits or vegetables, any canning compound which is adulterated within the terms of this act.

Provided that no article shall be deemed adulterated within the provisions of this act when intended for export to any foreign country or purchaser, and prepared and packed according to the specifications or directions of the foreign country to which said article is intended to be shipped; but, if said article shall be in fact sold or offered for sale for domestic use or consumption then this proviso shall not except said article from the operation of any of the other provisions of this act. ('15 c. 335 § 1)

Section 7 repeals 1913 c. 441 [3725–3727].

[3727—]2. Same—Possession with intent to sell—Penalty—The having in possession of any preservative compound which is adulterated as herein defined, with intent to sell the same, is hereby prohibited, and whoever shall have in his possession with intent to sell, sell or offer for sale any preservative compound, which is adulterated within the meaning of this act, shall be guilty of a misdemeanor and, on conviction thereof, shall be punished as hereinafter provided.

Proof that any person, firm or corporation has or had possession of any preservative compound which is adulterated within the terms of this act shall be prima facie evidence that the possession thereof is in violation of this section. ('15 c. 335 § 2)

[3727—]3. **Same—"Preservative compound" defined**—The term "Preservative Compound," as used herein, shall include all articles used for preservative purposes, whether simple, mixed or compound, and any substance used as a constituent in the manufacture thereof. ('15 c. 335 § 3)

[3727—]4. **Same—When deemed adulterated**—That for the purposes of this act a preservative compound shall be deemed to be adulterated if it contain any added poisonous or other added deleterious, unwholesome and injurious ingredient which may render said article injurious to public health; and formaldehyde, hydrofluoric acid, salicylic acid, sulphurous acid, and all compounds and derivatives thereof, are hereby declared unwholesome and injurious. ('15 c. 335 § 4)

[3727—]5. **Same—Dairy and food commissioner to enforce**—The dairy and food commissioner of the state is charged with the proper enforcement of all the provisions of this act. ('15 c. 335 § 5)

[3727—]6. **Same—Penalty for violation**—Whoever shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and violation thereof shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100), or by imprisonment in the county jail for not more than three (3) months. ('15 c. 335 § 6)

[3732—]1. **Cold storage eggs—Sale, etc., without making known, etc., prohibited—Receptacles to be stamped**—No person, firm or corporation by himself or his agents shall sell, agree to sell, or advertise for sale any cold storage eggs without making it known to the purchaser or prospective purchaser that the eggs are cold storage eggs, and all boxes or other receptacles in which cold storage eggs are sold or delivered, in wholesale or retail, shall be stamped in a conspicuous manner with the words: "Cold Storage Eggs." ('15 c. 18 § 1)

[3732—]2. **Same—Dairy and food commissioner to enforce**—The dairy and food commissioner of the state is charged with the proper enforcement of all the provisions of this act. ('15 c. 18 § 2)

[3732—]3. **Same—Penalty for violation**—Whoever shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) or by imprisonment in the county jail for not less than fifteen days for each and every offense. ('15 c. 18 § 3)

MISCELLANEOUS PROVISIONS

[3771—]1. **Commercial fertilizers—Certificate to be attached on sale**—That any persons, firm or corporation, who shall offer, sell or expose for sale, in the State of Minnesota, any commercial fertilizer the price of which exceeds five dollars (\$5.00) per ton, shall affix to every package, in a conspicuous place on the outside thereof, or furnish to the purchasers of goods sold in bulk, a plainly printed certificate, naming the materials, including the filler, if any, of which the fertilizer is made, stating the number of pounds in the package sold, the name or trademark under which the article is sold, the name of the manufacturer and the place of manufacture; and a chemical analysis, stating the minimum percentage of nitrogen in available form, of potassium soluble in water, of phosphorus in available form (soluble or reverted) and of insoluble phosphorus. ('15 c. 251 § 1)

[3771—]2. **Same—Certified copy of certificate to be filed with dairy and food commissioner**—Before any commercial fertilizer is sold, or offered for sale, the manufacturer, importer or party who causes it to be sold, or offered for sale, within the State of Minnesota, shall file in the office of the dairy and food commissioner a certified copy of the certificate referred to in Section 1 of this act [3771—1] and shall pay to the dairy and food commissioner on or before May 1st of each year a license fee of ten dollars (\$10.00) for each brand of fertilizer offered for sale or sold within the state. Provided, that whenever the manufacturer or importer shall have paid the license fee herein required

for any year, no other person shall be required to pay such license fee for that brand. ('15 c. 251 § 2)

[3771—]3. **Same—Commissioner to enforce**—The state dairy and food commissioner and his assistants shall enforce the provisions of this act, and he may publish annually a report of all analysis made and certificates filed. The inspectors and assistants of the dairy and food commissioner shall exercise, in the enforcement of this act, all the authority and powers now granted such assistants under the food and dairy laws of the State of Minnesota. The state dairy and food commissioner is hereby authorized, in person or by deputy, to take for analysis a sample from any lot or package of commercial fertilizer in this state not exceeding two pounds in weight. ('15 c. 251 § 3)

[3771—]4. **Same—Penalty for violation**—Any person, firm or corporation who shall offer or expose for sale or sell any commercial fertilizer in the State of Minnesota without complying with the provisions of this act, or who shall use an analysis regarding any commercial fertilizer, which shall be false as to the constituents named in Section 1 of this act [3771—1], or who shall obstruct or interfere with the dairy and food commissioner, or any of his assistants, in the discharge of their duties, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) for each offense. ('15 c. 251 § 4)

[CHAPTER 21B]

[REGULATION OF SALE OF STOCKS, BONDS AND OTHER SECURITIES]

[3782—]1. **State securities commission—How constituted—Meetings—Secretary—Salary—Powers and duties—Annual report**—There is hereby created a commission to be known as the state securities commission, hereafter referred to as the "commission," whose duty it shall be to administer and provide for the enforcement of all the provisions of this act. Said commission shall consist of the public examiner who shall be the president thereof, the attorney general of the state or an assistant attorney general specifically designated by him therefor and the commissioner of insurance all of whom shall be members of said commission during their terms of office and any two shall constitute a quorum. Said commission shall have its office in the state capitol, in the city of St. Paul, in a room to be furnished and equipped by the state and all its records shall be there kept. It shall hold regular bi-weekly meetings on such dates as may be determined by the commission and may hold special meetings upon the call of the president; it shall keep a complete record of all its meetings, its accounts and the business it transacts and may prepare all necessary blanks to be used in its proceedings and in the conduct of its business. The commission shall have the power to appoint a secretary at a salary to be fixed by the commission, not exceeding three thousand (\$3,000) dollars per annum. The person so appointed shall proceed to qualify by subscribing the usual oath of office and by giving a bond to the state of Minnesota in the sum of ten thousand dollars with such surety as the commission shall approve, conditioned upon the faithful performance of the duties of the office which bond shall be filed and recorded as now provided by law for state officers. The secretary, when acting for the commission, shall have equal power and authority, subject to the approval of the commission and he shall attend to and perform any and all detailed work relative to the commission. The commission shall have power to employ such other and further assistance as may be necessary to carry out the provisions of this act. Annually on or before the first day of November, the commission shall prepare and file in the office of the governor a report containing an accurate review of the work of the commission for the fiscal year ending June 30th, preceding the date of said report and which shall contain a schedule of all ap-

plications for license to sell securities in the state, a schedule of licenses granted, a schedule of licenses rejected, a statement of the receipts and disbursements of the commission and such other material information as relates to the work of the office. ('17 c. 429 § 1)

By section 20 this act takes effect July 1, 1917.

[3782—]2. To what securities act not to apply—The provisions of this act except section 10 thereof [3782—10], shall not apply to (a) securities of the United States; or any foreign government; or of any state or territory thereof; or of any county, city, township, district or other public taxing subdivision of any state or territory of the United States or any foreign government; (b) commercial paper, or unsecured negotiable promissory notes, due in not more than eighteen months from their date; (c) securities of public or quasi public corporations, the issue of which securities is regulated by a public service commission or board of supervising authority of this state or of any state or territory of the United States, or securities senior thereto; (d) securities of federal reserve banks, federal farm loan banks, state, savings or national banks or trust companies, or building and loan associations of this state, or co-operative associations organized under sections 6479 to 6490 inclusive, general statutes 1913, for operating creameries, cheese factories, or rural telephone lines, where the authorized capital stock never exceeds fifteen thousand dollars, or of insurance companies under control of the commissioner of insurance complying with chapter 385 General Laws 1913 [3275—3289]; (e) securities of any domestic corporation organized with out capital stock and not for pecuniary gain, or exclusively for educational, religious, benevolent, charitable or reformatory purposes; (f) authorized securities as specified and defined by section 6393 of the General Statutes of 1913 and any amendment thereof, or securities of the classes specified and defined in section 3313, General Statutes 1913; (g) mortgages and notes or bonds secured by mortgage upon real or personal property where the entire mortgage is sold and transferred with the note or notes or bonds secured by such mortgage, or where the indebtedness secured is not more than seventy per cent of the fair value of the property mortgaged; (h) increase of stock sold and issued to stockholders, or stock dividends; (i) securities sold pursuant to the order of any court; (j) isolated or single transactions. ('17 c. 429 § 2)

[3782—]3. "Investment company" and "dealer" defined—Every person, firm, co-partnership, corporation, company or association (except those exempt under the provisions of this act) whether unincorporated or incorporated, under the laws of this or any other state, territory or government, which shall either himself, themselves or itself, or by or through others engage in the business within the state of Minnesota of selling or negotiating for the sale of any stocks, bonds, investment contracts or other securities, herein called securities, issued by him, them or it, except to a bank or trust company, shall be known, for the purpose of this act, as an investment company.

Every person, firm, co-partnership, company, corporation or association, whether unincorporated or incorporated under the laws of this or any other state, territory, or government, not the issuer, who shall within the state of Minnesota sell or offer for sale any of the stocks, bonds, investment contracts, or other securities, herein called securities, issued by an investment company, except the securities specifically exempt under the provisions of this act, or who shall by advertisement or otherwise profess to engage in the business of selling or offering for sale such securities within the state of Minnesota, shall be known for the purpose of this act as a dealer. The term dealer shall not include an owner, nor issuer, of such securities so owned by him when such sale is not made in the course of continued and successive transactions of a similar nature, nor one who in a trust capacity created by law lawfully sells any securities embraced within such trust. ('17 c. 429 § 3)

[3782—]4. Investment companies and dealers to register with commission—Information to be furnished—Fees—Agents to register—Nonresident investment companies—License—Selling securities, etc., without registration

prohibited—No such investment company and no such dealer shall sell or offer for sale any such securities or profess the business of selling or offering for sale such securities, unless and until he or it shall first register with the commission and shall furnish said commission, upon oath, in such form as the commission shall prescribe, the following information, to-wit: The investment company's or dealer's name, residence and business address, the general character of the securities to be sold or dealt in, the place or places where the business is to be conducted within this state, and where the business in this state is not to be conducted by the investment company or by the dealer in person, then the names and addresses of all the persons in charge thereof. Said investment company shall pay to the commission a filing fee of one-tenth of one per cent upon the face value of the securities for the sale of which application is made; provided that such filing fee shall not be more than one hundred dollars nor less than ten dollars, and said dealer shall pay to the commission an annual fee of twenty-five dollars and shall furnish said commission with such other information in addition to that above specified as said commission shall deem necessary in order to thoroughly acquaint such commission with the honesty and good faith of such dealer or investment company, and the character of the business of said investment company or dealer. All authorized agents of any dealer or investment company shall be registered with the commission and the name of any agent shall be stricken from the register by the commission upon the written request of the dealer or investment company, and additional agents may be registered by the commission upon like request of the dealer or investment company; provided, that no agent shall act as such until he shall have filed with the commission a signed and acknowledged certificate of registration and acceptance of agency upon forms to be furnished by the commission; provided, also, that the commission shall have authority to reject or cancel the registration and appointment of any person as agent for such cause as may to the commission appear sufficient. If an investment company or dealer shall be a non-resident of the state or a corporation other than a domestic corporation, he or it shall at the time he or it registers with the commission also file with the commission a written, duly authorized, executed and acknowledged appointment of the public examiner of this state as his or its agent in Minnesota, upon whom process or pleadings may be served for or on behalf of the dealer or investment company, which appointment shall be irrevocable. Upon compliance by such investment company or dealer with the provisions of this act, the said commission shall issue to such investment company or dealer a license under the seal of said commission and signed by the secretary thereof, in such form or forms as the commission shall adopt, which said license shall be good until revoked by said commission for good cause upon notice to such investment company or dealer and a hearing duly had; provided, however, said license may be suspended as to the selling of specific securities as provided in section 8 of this act [3782—8]. In addition to the filing and examination fees herein provided for to be paid by said investment companies and dealers, there shall be charged and collected by said commission a fee of three dollars for the registration and authorization of each agent of such investment company or dealer, which fee and registration shall entitle each agent to act as such until the first day of July following, unless said authority is sooner revoked by the commission or the dealer or investment company. Each of such agents shall make a new registration on July 1st of each year for the renewal of their agency, and the commission shall charge and collect for each such renewal registration a fee of three dollars. ('17 c. 429 § 4)

[3782—]5. **Disposition of fees**—All fees and charges collected by the commission shall be covered into the state treasury and credited to the state securities commission fund. ('17 c. 429 § 5)

[3782—]6. **Promoting or negotiating securities**—Statement to be filed with commission—Every investment company or dealer who shall, as principal or agent, promote or negotiate by advertisement, letter, circular, prospectus, by word of mouth or by any other method of public or general offering, or specific offering, the sale or distribution of any such securities, not

exempted under the terms of this act, in this state, except to banks, trust companies or to duly licensed dealers, shall before making such negotiation, sale or promotion file a statement in writing signed by such investment company or dealer, as the case may be, or by its or his authorized representative, notifying the commission of its or his intention to promote, offer or sell such securities, describing fully such securities, and furnishing to said commission true copies of all prospectuses, circulars, and advertisement used, or to be used in such sale or promotion, and said commission may make such investigation thereof and require such further information or proof with respect thereto as it may deem necessary to determine the character of such securities or of such promotion. If any such investment company or dealer shall mail by registered mail postpaid and properly addressed to the commission such notification and documents prescribed in this section, with the name and address of the investment company or dealer, the same shall be deemed a filing and notification under this section, provided said registered letter or package would reach the commission at least twenty-four hours in the ordinary course of delivery, before such sale, promotion or offering shall be made. ('17 c. 429 § 6)

[3782—]7. Investigations to be made by commission—Attendance of witnesses, etc.—The commission may also make such special investigations as it may deem necessary in connection with the promotion or sale of any such securities to the end that the commission may be put in possession of all facts and information necessary to qualify it to properly pass upon all questions that may properly come before it, and to determine if the same is in violation of this act or of any of the acts of the legislature described in section 9 hereof [3782—9], and to that end it shall have power to issue subpoenas compelling the attendance of any person and the production of any papers and books for the purpose of such investigation, and shall have power to administer oaths to any person whose testimony may be required in such investigation. It may also make or have made under its direction a detailed examination and report of the property, business and affairs of such investment company, which investigation and examination shall be at the expense of such investment company, or of the dealer seeking to sell such securities. It may cause an appraisal to be made at the expense of said investment company or dealer, of the property of said investment company. ('17 c. 429 § 7)

[3782—]8. Suspension of license—Hearing—The commission shall have the power to suspend the license of any investment company or of any dealer with respect to the sale or promotion of any security or securities said dealer or investment company may propose to sell, upon original notification of his or its purpose to sell, or at any future time when information in the possession of the commission may cause it to believe that the further sale of said securities would be a violation of this act, pending the furnishing of any proof or information which the commission has asked or may ask for under the terms of this act. The investment company, or dealer, however, may demand a hearing upon such suspension, at any subsequent meeting of the commission, or the commission upon notice duly given may set a time for hearing, at which the commission shall grant a full hearing to all parties concerned, and upon such hearing duly had may make such order as the facts justify removing, continuing or making permanent the suspension, or revoking the license of said dealer or investment company as to the sale of such securities or of all securities in the state. ('17 c. 429 § 8)

[3782—]9. Findings of commission—Fraud on purchaser, etc.—Notice to investment company or dealer—Arrest and prosecution—Duty of county attorney—If the commission finds that the proposed plan of business of said investment company, or that its proposed contracts, stocks, bonds or other securities, are fraudulent or are of such a nature that the sale of such contracts, stocks, bonds, or other securities would in the opinion of said commission work a fraud upon the purchaser, or, if said commission shall determine that any such promotion or sale constitutes a violation of this act, or that

any such promotion or sale constitutes the crime defined and described in chapter 479, General Laws, Minnesota 1909 [8902], entitled, "An act to prohibit the making or publishing of false statements of publications of or concerning the affairs, pecuniary condition or property of any corporation, joint stock association, co-partnership or individual, which said statements or publications are intended to give or shall have a tendency to give, a less or greater apparent value to the shares, bonds or property, or any part thereof of said corporation, joint stock association, co-partnership or individual than the said shares, bonds or property shall really and in fact possess, and providing a penalty therefor," or that any such promotion or sale constitutes the crime defined and described in chapter 51 of the Laws of Minnesota for 1913, entitled "An act to prevent fraudulent advertising," as amended by chapter 309 of the laws of 1915 [8903], in so far as said act relates to securities and shall notify said dealer or investment company by registered mail and also by telegraph if deemed advisable, of its findings, suspension or disapproval, then it shall be unlawful for such investment company or dealer to do any business in the way of selling, offering for sale, taking subscriptions for, or negotiating for the sale in any manner whatever of any such securities in this state; and said securities shall not be sold in this state, and it shall immediately suspend the license of said investment company or dealer with respect to the promotion or sale of said securities, and shall so notify him or it, and the commission may immediately take such steps as may be necessary to cause the arrest and prosecution of all persons deemed guilty thereof. It shall be the duty of each county attorney to prosecute any violation of this act in his county, and upon his request or the request of the commission the attorney general shall assist in such prosecution. ('17 c. 429 § 9)

[3782—]10. **Scheme or artifice to defraud—Penalty**—If any person, including a corporation, co-partnership, company or association, and the officers or agents thereof, alone or in common with others, having devised or intending to devise any scheme or artifice to defraud by the issuance, sale, promotion, negotiation or distribution of any stocks, bonds, notes, contracts or other securities, shall in and for executing such scheme or artifice or in attempting so to do, commit any overt act within this state, such person shall be guilty of a gross misdemeanor. ('17 c. 429 § 10)

[3782—]11. **False statements—Penalty**—Any person who shall knowingly make or file, or cause to be made or filed any statement, information, or proof required hereunder, by said commission, which is in whole or in part materially false, or any investment company or dealer who shall sell or promote, or cause to be promoted by advertisement, circular letter prospectus, by word of mouth, or by any other form of public or general offering, the sale of any securities without complying with the provisions of this act, or without furnishing to the commission any information or proof in the possession of or reasonably obtainable by him or it, after the same is required by the commission under this act, shall be guilty of a gross misdemeanor. ('17 c. 429 § 11)

[3782—]12. **"Speculative securities" defined—Promotion or sale**—If the securities promoted or proposed to be sold under section 6 of this act [3782—6] are speculative securities as hereinafter defined, or if the commission shall declare them to be speculative securities as hereinafter provided, then such promotion or sale shall not be made unless at least ten days prior thereto all provisions of this act shall have been complied with, and all information called for by the commission shall have been satisfactorily furnished.

The term "speculative securities" as used herein shall include any stocks, bonds, contracts, or other securities, which according to the terms thereof, yield or promise to yield more than the legal contract rate of interest in this state on the price at which they are offered or sold, or which are offered or sold with any representation or inducement that such securities are or will be worth within two years of the date of their issue twice or more than twice the price at which they are offered or sold. ('17 c. 429 § 12)

[3782—]13. Preserving, classifying, etc., information—Publicity—It shall be the duty of the commission to so preserve, classify and arrange such information as to facilitate examination by the commission.

The commission may, in its discretion, give out information relating to the affairs of any investment companies or dealers offering, to any person affected by the matters therein contained, when such persons satisfactorily show to the commission that they are entitled to the information to aid them in determining the desirability of the investment offered.

The commission shall not reveal the text of any formula, process, patent, copyright, or any portion thereof to any one inquiring without the written consent of the person or corporation whose offering is inquired of.

The commission shall not reveal information relative to any matter that may be at issue in any court, unless upon an order of the court.

The commission may from time to time issue in pamphlet form, or by newspaper advertisement or otherwise, information regarding offerings it considers fraudulent offered by persons or parties within or without the jurisdiction of the state for sale to parties within the state by mail, advertisement or otherwise. ('17 c. 429 § 13)

[3782—]14. Powers of banking department and commissioner of insurance—Nothing in this act shall be construed to repeal or modify any laws giving the state banking department of this state control of and supervision over state banks, savings banks, trust companies, and the business of banking in this state, nor shall any part of this act be construed to repeal or modify laws giving the commissioner of insurance of this state control of and supervision over the business of insurance in this state, and those engaged therein. This act shall not be construed to be amendatory of, nor as superseding any statute of this state now in force, but as supplementary thereto. ('17 c. 429 § 14)

[3782—]15. Seal and records—The commission shall adopt a seal with the words "State Securities Commission, Minnesota," and such design as the commission may prescribe, engraved thereon, by which it shall authenticate its proceedings. Copies of all records and papers in the office of the commission certified by the secretary thereof and authenticated by the seal of said state securities commission shall be received in evidence in all courts equally and with like effects as the originals. ('17 c. 429 § 15)

[3782—]16. Information to be furnished applicants—Expenses—The commission shall provide for the furnishing to those who may rightfully apply therefor as is provided in section 13 [3782—13] of any information regarding any investment company or dealer, or regarding any securities offered by any dealer which is on file in its office, except such as is withheld by the commission under section 13 of this act [3782—13], said commission to charge therefor approximately the cost of preparing such information. The members of the commission shall perform the duties imposed upon them and each of them by the terms of this act, without other compensation than the salaries paid them by the state, but they shall be entitled to receive their actual and necessary expenses incurred when absent from the seat of government on business of the commission. ('17 c. 429 § 16)

[3782—]17. Penalty for violation—Any person or persons who shall violate any of the provisions of this act shall be deemed guilty of a gross misdemeanor, and upon conviction thereof shall be fined not more than one thousand dollars or shall be imprisoned for not more than one year, or both such fine and imprisonment in the discretion of the court. ('17 c. 429 § 17)

[3782—]18. Review by supreme court—The supreme court upon petition of any person aggrieved may review by certiorari any final order or determination of the commission. The issuance of the writ shall not, however, unless specifically ordered by the court, operate as a stay of proceedings. ('17 c. 429 § 18)

[3782—]19. Partial invalidity of act—Should the courts of this state declare any section or provision of this act unconstitutional or unauthorized, or in conflict with any other section or provision of this act, then such decision

shall affect only the section or provisions declared to be unconstitutional or unauthorized, and shall not affect any other section or part of this act. ('17 c. 429 § 19)

CHAPTER 22

FORESTRY AND FOREST FIRES

[3794—]1. **Forester to give employment to sanatorium inmates**—The state forester is hereby authorized and directed that in the employment of labor whenever it is necessary to reforest the state lands of the state, or to perform such other labor as will by him be deemed proper in the care of such land, he shall consult the superintendent of the State Sanatorium for Consumptives and find from such superintendent, those persons who are able to perform labor who have received treatment at said sanatorium or county sanatorium for three months and shall in the employment of such laborers give preference to those who are in his judgment competent to perform such labor. ('15 c. 325 § 1)

[3794—]2. **Same—Compensation**—The compensation to be paid for such labor shall be the same as that received by others for like services. ('15 c. 325 § 2)

3810. Laws repealed—

Cited (125-15, 145+402).

CHAPTER 23

REGULATION OF LABOR

DEPARTMENT OF LABOR AND INDUSTRIES

[3820—]1. **Co-operation with federal government and municipalities in conduct of labor bureaus**—The commissioner of labor is hereby authorized and empowered to co-operate with the federal government in the establishment, and maintenance within the state of Minnesota, of one or more employment bureaus for the purpose of bringing together the man and the job. Said commissioner is also authorized and empowered to co-operate in a similar way, and for the same purpose with [a] municipality or municipalities, or with the federal government and any municipalities.

Such co-operative employment bureaus, when established shall be under the joint management of the co-operating parties and the cost and expense of establishing and of carrying on any such bureau, shall be borne by the co-operating parties, upon an equitable basis to be agreed upon between them. ('17 c. 113 § 1)

3825. Penalties—Any officer, agent, or employé of the department who shall disclose the name of any person supplying information at the request of the department shall be guilty of a misdemeanor. Any person who, having been duly subpoenaed, shall refuse to attend or testify in any hearing under the direction of said commissioner shall be guilty of a misdemeanor. Any owner or occupant of any factory, mill, work shop, engineering work, store or other place enumerated in section 8 of this act, or agent of such person, who shall refuse to admit thereto any officer, agent or employé of the department seeking entrance in the discharge of his duty, shall be guilty of a misdemeanor. Any person, firm or corporation, or any of its officers or agents, who or which shall refuse to file with the department such reports as are required by it under the provisions of this act shall be guilty of a misdemeanor. ('13 c. 518 § 14, amended '17 c. 14 § 1)

GENERAL PROVISIONS

3831. Maximum day's work—Unless a shorter time be agreed upon, or be provided by law, the standard day's work for hire shall be ten hours. Every employer and other person having control who shall compel any person to labor more than ten hours in any one day, shall be guilty of a misdemeanor; but persons of sixteen years of age and over, unless expressly forbidden by law, may labor extra hours for extra pay; and this section shall not apply to farm laborers, to domestic servants employed by the week or month, or to persons engaged in the care of live stock. (Amended '17 c. 248 § 1)

3848. Same—Children under 16—Prohibited employments—Penalty—

Cited (133-109, 157+995).

This section and § 3870, construed as including dissimilar employments dangerous to life and limb, is not unconstitutional as leaving the dangerous character of the work in uncertainty (162+680). Master and Servant, § 11.

The concluding clause following the enumeration of certain prohibited employments, held to include employments which are dangerous to the life and limb of the minor, though not similar in character to the class of work there specifically enumerated. Employment of minor aged 14 years 4 months in a quarry in connection with stationary engines, cars, etc., when injured from being run over by car, was within this section and § 3870 (162+680). Master and Servant, § 96.

3858. Assignment of wages or salary—Written notice—No assignment, sale or transfer, however made or attempted to be made, of any wages or salary, to be earned, shall give any right of action, either at law or in equity, to the assignee or transferee of such wages or salary, nor shall any action lie for the recovery of such wages or salary, or any part thereof, by any other person than the person to whom such wages or salary are to become due, unless a written notice, together with a true and complete copy of the instrument assigning or transferring such wages or salary, shall have been given within three days after the making of such instrument to the person, firm or corporation from whom such wages or salary are accruing, or may accrue. (Amended '17 c. 321 § 1)

This section is not unconstitutional, as infringing upon freedom of contract, or as class legislation (125-211, 146+359, Ann. Cas. 1915C, 688). Constitutional Law, § 89(4), 208(7).

The issue of noncompliance with this section held sufficiently raised by defendant's general denial (125-211, 146+359, Ann. Cas. 1915C, 688). Assignments, § 132.

[3860—]1. Certain assignments, wages or salary legalized—That any and all assignments, sales or transfers of any wages or salary heretofore earned where no written notice, and copy of the instrument, assigning or transferring such wages or salary, or either of them, was given within three days after the making of such instrument to the person, firm or corporation from whom such wages or salary have accrued or are accruing, or where the requirements of section 3858, General Statutes, 1913, have not been complied with, are hereby legalized, confirmed and validated, and all such assignments are hereby made valid and enforceable by or against any such person, firm or corporation from whom such salary or wages have accrued or are accruing, as fully and to the same extent as if the acts hereinbefore referred to had been performed. Provided that nothing in this act shall be held to apply to or affect any action heretofore commenced or now pending in any of the courts of this state. ('17 c. 454 § 1)

[3861—]1. Public service corporations to pay wages semi-monthly, etc.—All public service corporations doing business within this state are required to pay their employees at least semi-monthly, the wages earned by them to within fifteen (15) days of the date of such payment, unless prevented by inevitable casualty.

Provided, however, that whenever an employee shall be discharged, his wages shall be paid to him at the time of his discharge or whenever he shall demand the same thereafter. ('15 c. 29 § 1, amended '15 c. 37 § 1)

[3861—]2. Same—Penalty for violation—Whenever any public service corporation shall for five days neglect or refuse to pay its employees as prescribed by Section 1 of this act [3861—1], the wages due them may be recovered by action without further demand, and there shall be allowed to the

plaintiff, and included in his judgment, in addition to his disbursements allowed by law, five dollars costs if the judgment be recovered in a justice court, and a like sum if the judgment be recovered in a municipal court, where no statutory costs are now allowed in such municipal court in such action, and double costs in all other courts or on appeal. ('15 c. 29 § 2, amended '15 c. 37 § 1)

[3861—]3. **Payment of salary or wages by non-negotiable time check or order—Penalty—**It shall be unlawful for any person, firm or corporation other than public service corporations to issue to any employee in lieu of or in payment of any salary or wages earned by such employee, a non-negotiable time check or order. Any person, firm or corporation so issuing a non-negotiable instrument in lieu of or in payment of such salary or wages earned, shall be guilty of a misdemeanor. ('17 c. 348 § 1)

3862. Dangerous machinery, how guarded—Defective machines, etc.—Powers of commissioner—

129-432, 152+840.

Evidence held to justify a finding of negligence in failing to guard dangerous machinery (124-65, 144+434). Negligence, *see* 134(4).

3866. Manufacture and sale of unguarded machines prohibited—

Cited (133-28, 157+899).

3867. Rails and foot guards—Stairways—

See note under § 3862.

3870. Children under 16 not to be employed in certain occupations—

The statute is not unconstitutional, as leaving the basis of the prohibition, namely, the dangerous character of the work, to doubt or uncertainty (162+680). Master and Servant, *see* 11.

As to application of this section to an action based on the federal Employers' Liability Act (see 133-301, 158+430). Master and Servant, *see* 153(2).

Concluding clause of this section, following enumeration of certain employments, includes employments dangerous to life and limb, though not similar to the class of work enumerated. The employment of a minor in a quarry held prohibited (162+680). Master and Servant, *see* 95.

3871. Same—

Cited (133-109, 157+995).

3873. Protection of hoistways, elevators, etc.—

Neither § 1813, R. L. 1905, nor § 1815 of said statutes, imposed any duty to inclose the car of a freight elevator (125-29, 145+628). Master and Servant, *see* 121(7).

Evidence of negligence in repair of automatic gates on elevator held to support verdict for death of employé (129-77, 151+541). Master and Servant, *see* 286(18).

Elevator in a manufacturing plant held improperly constructed (121-388, 141+488). Master and Servant, *see* 276.

3874. Scaffolds, hoists, etc.—Duty of inspector—Overhead walks, etc.—

181-475, 155+767.

An accident occurring prior to the enactment of this section is not affected by its terms as to the degree of duty owing by defendant to see that a proper plan of construction of a staging was used (128-71, 149+954). Master and Servant, *see* 116(2).

3884. Corn shredders, etc.—Safety devices to be approved by commissioner—Sale, when prohibited—

A manufacturer of a corn husker and shredder is not liable to an employé for injuries resulting from the fact that the machine was not guarded as required by this section, where the violation of the statute was not the proximate cause of the injury (133-28, 157+899). Negligence, *see* 56(3).

3887. Cleanliness, etc.—

Whether this section is for the benefit of persons other than employés, *quære* (124-65, 144+434).

MINIMUM WAGE COMMISSION

3904-3923.

This act is a valid exercise of the police power of the state. It is not invalid as a delegation of legislative power to the Minimum Wage Commission. While the legislature cannot delegate legislative power, it may delegate authority or discretion to be exercised under and in pursuance of the law. It may delegate power to determine some fact or state of things upon which the law makes its own operation depend (165+495). Constitutional Law, *see* 62; Master and Servant, *see* 69.

3907. Public hearings—Witnesses, etc.—

Cited (131-116, 154+750).

STATE BOARD OF ARBITRATION**3942. Procedure—Decision and its effect—**

Cited (131-116, 154+750).

[INJUNCTIONS AND RESTRAINING ORDERS]

[3946—]1. **Labor unions not unlawful**—It shall not be unlawful for working men and women to organize themselves into, or carry on labor unions for the purpose of lessening the hours of labor or increasing the wages or bettering the conditions of the members of such organizations; or carrying out their legitimate purposes as freely as they could do if acting singly. ('17 c. 493 § 1)

[3946—]2. **Same—Restraining order or injunction in what cases not to be granted**—No restraining order or injunction shall be granted by any court of this state, or any judge or judges thereof in any case between an employer and employes or between employer and employes or between employes or between persons employed and persons seeking employment, involving or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney. ('17 c. 493 § 2)

[3946—]3. **Same—Restraining order or injunction, not to prohibit what acts**—No restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment or from ceasing to perform any work or labor; or from recommending, advising or persuading others by peaceful means so to do; or from attending at any place where any person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any such person to abstain from working; or from ceasing to patronize any party to such dispute; or from recommending, advising, or persuading others by peaceful and lawful means, so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by a single individual; or shall any of the acts specified in this section be considered or held to be illegal or unlawful in any court of the state. ('17 c. 493 § 3)

[3946—]4. **Labor not commodity or article of commerce, etc.—Injunction, when not to be granted**—The labor of a human being is not a commodity or article of commerce, and the right to enter into the relation of employer and employé, or to change that relation; or to assume and create a new relation for employer and employé; or to perform and carry on business with any person in any place; or to work and labor as an employé, shall be held and construed to be a personal, and not a property right. In all cases involving the violation of the contract of employment, either by the employé or employer where no irreparable damage is about to be committed upon the property or property right of either, no injunction shall be granted, but the parties shall be left to their remedy at law. ('17 c. 493 § 4)

[3946—]5. **Same—No indictment, when**—No person shall be indicted, prosecuted, or tried in any court of this state for entering into or carrying on any arrangement, agreement, or combination between themselves made with a view of lessening the number of hours of labor or increasing wages or bet-

tering the condition of working men, or for any act done in pursuance thereof, unless such act is in itself forbidden by law if done by a single individual. ('17 c. 493 § 5)

[3946—]6. **Not to curtail power of executive department or courts, when**—Nothing in this act shall hamper or curtail or in any manner take away the power of the executive department of government, or of the courts where there is threatened any irreparable injury to business or property by reason of violence, threats or other unlawful acts, or where criminal syndicalism, as hereinafter defined, or the acts constituting the same, are involved; and criminal syndicalism is hereby defined to be the doctrine which advocates crime, sabotage, violence, or other unlawful methods of terrorism as a means of accomplishing industrial, social or political reform. ('17 c. 493 § 6)

CHAPTER 24

SOLDIERS' HOME, RELIEF, ETC.

3954. Who may be admitted—The object of the soldiers' home shall be to provide a home for all honorably discharged ex-soldiers, sailors and marines, who served in the army or navy of the United States during the war of the rebellion, or the Mexican war, or in the war begun in the year 1898 between the Kingdom of Spain and the United States, or the Philippine Insurrection, or the Boxer Rebellion, who now are or may hereafter become citizens of the State of Minnesota, who, by reason of wounds, disease, old age or infirmities are unable to earn their living, and who have no adequate means of support. No applicant shall be admitted to the soldiers' home who has not been a resident of the State of Minnesota for one year next preceding the time of making his application, unless he served in a Minnesota regiment, or was accredited to the State of Minnesota. All persons who are otherwise entitled under the provisions of this section to admission to said soldiers' home, who actually served in any campaign against the Indians in Minnesota, in the year 1862 shall be entitled to admission to such soldiers' home, notwithstanding such persons were not regularly enlisted, mustered into or discharged from the military service of the United States.

The board of trustees are hereby authorized to admit wives with their husbands, and the widows or mothers of those who are, or if living, would be, eligible to admission under this act, but no wife or widow shall be admitted unless she shall have been married to her soldier husband prior to the year 1905, and no wife or widow of any honorably discharged ex-soldiers, sailors and marines, who served in the army or navy of the United States in the war begun in the year 1898 between the Kingdom of Spain and the United States, or the Philippine Insurrection, or the Boxer Rebellion, shall be admitted unless she shall have been married to her soldier husband prior to the year 1916, and then only in the event that by reason of physical disabilities, infirmities or old age she is unable to support herself and has no other adequate means of support; and no wife, widow or mother shall be admitted unless she shall have been a resident of the State of Minnesota no less than five (5) years next preceding the date of her application, and no wife, widow or mother shall be admitted unless she shall have attained the age of 55 years at the time of making such application. Provided, however, that in case any such wife, widow or mother who had previously been a resident of Minnesota for not less than ten years, and who has lost her residence in this state by removal therefrom for the benefit of her health or the health of her husband or son, and who has returned to this state for the purpose of making it her home, may be admitted to said soldiers' home after having been a resident of this state for not less than one year next preceding the date of her application, provided such applicant is otherwise eligible to admission under the provisions of this

section, and provided further, that all soldiers of the Minnesota National Guard who heretofore or hereafter may lose an arm or leg or his sight, or may become permanently disabled from any cause while in the line and discharge of duty, and are not able to support themselves, may be admitted to the home under such rules and regulations as the board of trustees may adopt, and any soldier of the Minnesota National Guard suffering from illness or injury sustained from any cause in the line and discharge of military duty, shall be admitted to the soldiers' home hospital for medical treatment and hospital service until recovery from such illness or injury, under such rules and regulations as the board of trustees may adopt. ('87 c. 148 § 3, amended '99 c. 166 § 1; '05 c. 222 § 1; '15 c. 259 § 1; '17 c. 205 § 1)

3957. Trustees—Compensation—Bonds, etc.—Said trustees shall be appointed by the governor with the consent of the senate, each for the term of six years, and until his successor qualifies. Vacancies shall be filled by like appointment for unexpired terms. They shall receive as compensation for their services in attending regular meetings of the board and regular meetings of the executive committee the sum of ten dollars (\$10.00) per day for each such meeting day so attended and in addition thereto the sum actually expended for railroad fare in traveling from the place of residence of such member to the place of meeting. Claims for such compensation shall be paid by the state treasurer from the money provided for the support of the Soldiers' Home upon itemized and verified vouchers approved by the president and secretary, after audit by the state auditor. Not more than four of the trustees shall be members of the same political party, and in the selection of trustees, officers of the home, and employes of the board, preference shall be given to honorably discharged soldiers, sailors and marines. Each trustee shall give a bond to the state in the penal sum of five thousand dollars, conditioned for the faithful discharge of his duties and the economical expenditure of the funds provided for hereunder. The trustee who shall be selected by the board as treasurer of the home shall give an additional bond to the state in such sum as may be designated by the board of trustees, conditional that such treasurer shall account for and pay over, according to the directions of said board, all moneys or other property which may come into his possession with the consent of the inmates from the inmates of such home as such treasurer. The surety on such treasurer's bond may be any surety company that is authorized to contract as such by the laws of this state, and the cost thereof shall be paid out of the home support fund. (Amended '07 c. 326; '17 c. 188 § 1)

MISCELLANEOUS PROVISIONS

3975. Peddler's license free—No license fee or other charge shall be required of any honorably discharged soldier, sailor or marine who served the United States in the Civil War, in the Spanish-American War, in the Philippine Rebellion or in the Boxer Uprising, for the privilege of hawking or peddling goods and merchandise, not prohibited by law or ordinance, solely on his account. Upon application therefor, accompanied by proof of such discharge, to any clerk or other officer authorized to issue such license, the same shall forthwith be granted. Every violation hereof shall be deemed a misdemeanor, the minimum punishment whereof shall be a fine of ten dollars. (Amended '17 c. 230 § 1)

Section 2 repeals inconsistent acts, etc.

3976. Preference in appointments—That in every public department and upon all public works in the state of Minnesota and the counties, cities and towns thereof, honorably discharged soldiers, sailors and marines from the army and navy of the United States in the late Civil and Spanish-American and Philippine Insurrection Wars and the China relief expedition, who are citizens and residents of this state, shall be entitled to preference in appointments, employment and promotion over other applicants therefor, and the persons thus preferred shall not be disqualified from holding any position

hereinbefore mentioned on account of his age or by reason of any physical disability, provided such age or disability does not render him incompetent to perform properly the duties of the position applied for and when such soldier, sailor or marine shall apply for appointment or employment under this act, the officer, board or person whose duty it is or may be to appoint or employ such person to fill such position or place, shall before appointing or employing anyone to fill such position or place, make an investigation as to the qualifications of said soldier, sailor or marine for such place or position, and if he is a man of good moral character, and can perform the duties of said position applied for by him, as hereinbefore provided, said officer, board or person shall appoint said soldier, sailor or marine to such position or place of employment.

A refusal to allow the preference provided for in this and the next succeeding section to any honorably discharged soldier, sailor, or a reduction of his compensation intended to bring about his resignation or discharge, entitled such honorably discharged soldier, sailor or marine to a right of action therefor in any court of competent jurisdiction for damages, and also for a remedy for mandamus for righting the wrong. ('07 c. 263 §§ 1, 2, 3, amended '17 c. 499 § 1)

This act does not apply to the position of deputy inspector of oils, as § 3620 expressly empowers the chief inspector to remove such deputies at pleasure (131-190, 154+947). Officers, ~~68~~.

3977. Same—Mandamus—Removals—Any person whose rights may be in any way prejudiced contrary to any of the provisions of this section, shall be entitled to a writ of mandamus to remedy the wrong. No person holding a position by appointment or employment in the state of Minnesota or in the several counties, cities or towns thereof, who is an honorably discharged soldier, sailor, or marine having served as such in the army and navy of the United States in the late civil and Spanish and Philippine insurrection wars, and the China relief expedition shall be removed from such position or employment except for incompetency or misconduct shown after a hearing, upon due notice, upon stated charges, and with the right of such employé or appointee to review by writ of certiorari. The burden of proving incompetency or misconduct shall rest upon the party alleging the same. Nothing in this act shall be construed to apply to the position of private secretary or deputy of any official or department, or to any person holding a strictly confidential relation to the appointing officer. ('07 c. 263 §§ 1, 2, 3, amended '17 c. 499 § 1)

[4000—]1. Disposition of First Minnesota Infantry Monument Fund—Whereas, at the muster out of the First Regiment of the Minnesota Volunteers in the spring of 1864 there remained in the hands of said regiment a fund which they had accumulated while at their winter quarters in "Camp Stone," Md., during the winter of 1861-2, by disposing of certain excess rations, which fund, at the time of their muster out, was turned over to the State Treasurer to be disposed of as afterwards directed;

And whereas said fund has been drawn on from time to time until the balance now remaining in the hands of the State Treasurer amounts to the sum of seven hundred sixty-two dollars and ten cents (\$762.10), as represented by a certificate of deposit issued by the State Bank of Slayton, Minnesota, under date of December 17, 1914, bearing interest at the rate of four per cent per annum, from date thereof, which fund is designated as "First Minnesota Infantry Monument Fund," which certificate is payable to the order of W. J. Smith, State Treasurer;

And whereas, the only use to which the same has heretofore been devoted has been to maintain and keep in good order the monuments erected on the Gettysburg battlefield and the copper flower urn erected in the Gettysburg cemetery, where fifty-five members of said regiment are buried;

And whereas, it has been found necessary to expend not more than sixteen dollars (\$16.00) annually for defraying the cost of keeping said monument and the ground on which it stands and the aforesaid urn in order;

Now, therefore, it is enacted, that all of said fund shall be transferred to the state revenue fund, and thereafter remain the property of the state; and there shall be paid by the State Treasurer, out of said revenue fund, on the

order of the president of the First Regimental Association, or on the order of the governor of the State of Minnesota, the sum of four hundred dollars (\$400), or so much thereof as may be necessary, to assist in defraying the expense of preparing and publishing the regimental history of said regiment, now being prepared, and there shall likewise be paid, annually, to the proper officers having in charge the maintenance on the Gettysburg battlefield of the aforesaid monuments and urn and the grounds on which they are situate, the sum of sixteen dollars (\$16), which annual payments shall be made on the order of the Adjutant General of the State of Minnesota, supported by proper vouchers, showing to whom and for what purpose said payments are to be made. ('15 c. 49)

CHAPTER 25

BOARD OF CONTROL AND CHARITIES UNDER ITS EXCLUSIVE MANAGEMENT

THE BOARD

4004. Institutions under exclusive control—The board shall have the exclusive management of the state prison, state reformatory, state training school for boys and girls, the school for the feeble-minded, the state hospital asylums for the insane, the state school for the blind, the state school for the deaf, the state public school for dependent children, the state hospital for indigent, crippled and deformed children, the state hospital for inebriates and except as otherwise provided by law, the state sanatorium for consumptives, the home school for girls and the state reformatory for women. All expenditures for or on account of said institutions shall be made out of the funds appropriated or provided for each respectively. (Amended '17 c. 343 § 1)

Section 2 amends § 4065.

By § 3 this act takes effect July 31, 1917.

4020. Investigation—Witnesses—Contempt—

Cited (131-116, 154+750).

4023. Same—Qualifications of agents—No one shall be appointed as such agent without having had previous experience in caring for the insane or feeble-minded at a hospital for the insane or school for the feeble-minded for a period of not less than one year. (Amended '17 c. 208 § 1)

[4033—]1. **Stationery, furniture, supplies, etc.—Purchasing agent**—It shall be the duty of the state board of control to purchase for all the governmental departments of the State of Minnesota, not now under the financial or exclusive management of said board, all stationery, furniture, supplies and equipment now or hereafter required by law to be furnished by the state, and for such purposes the board may appoint a purchasing agent and fix his compensation, who under its direction and subject to its rules, shall attend to such purchases. ('17 c. 174 § 1)

Section 2 repeals inconsistent acts, etc.

See § [3066—]7.

By § 3 this act takes effect July 1, 1917.

[4035—]1. **Buildings erected by state, etc.—Preference to materials produced in state, etc.**—That in any and all buildings hereafter erected by the State of Minnesota, or to the erection of which the State of Minnesota has granted aid, preference shall always be given in the erection thereof to materials produced or manufactured in the State of Minnesota by citizens or residents thereof wherever practicable; provided that in the building and erecting of foundations, steps, approaches, and the outer walls of any and all such buildings, materials produced and manufactured in the State of Minnesota by citizens and residents thereof only shall be used. Provided, that the provisions

of this act shall not apply to metal lath or Portland cement necessarily used in any such foundations, steps, approaches or outer walls. ('15 c. 211 § 1)

[4035—]2. Same—Not to affect buildings under construction—This act shall not affect buildings now in process of construction nor shall it affect buildings for which contracts for the construction thereof have been entered into prior to the passage of this act. Provided further that nothing in this act shall prevent the completion of buildings now partially erected with the same kind of materials which have heretofore been used. Provided further, that nothing in this act shall prevent an addition being made to any building now constructed out of the same material as the original building, nor the completion of any group of buildings out of the same material as was used in the construction of the buildings already completed. ('15 c. 211 § 2)

[4035—]3. Same—Not to apply where pool or trust—The provisions of this act shall not apply in any case where, in the judgment of the different officers, boards, or other authority in this state, now or hereafter vested with the power of contracting for the buildings hereinbefore referred to, it appears that an attempt is being made by producers or manufacturers in this state to form a pool, trust or combination of any kind for the purpose of fixing or regulating the price of materials to be used in any such building or buildings. ('15 c. 211 § 3)

4050. [Repealed.]

See § [4992—]22.

[4053—]1. Board to have guardianship of children committed by courts—Delinquent children—The state board of control shall have powers of legal guardianship over the persons of all children who may be committed by courts of competent jurisdiction to the care of the board, or to institutions under its management. After commitment to its guardianship the board may make such provision for and disposition of the child as necessity and the best interests of the child may from time to time require; provided, however, that no child shall be placed in an institution maintained for the care of delinquents who has not been duly adjudged to be delinquent; and provided further that the board shall not be authorized to consent to the adoption of a child who is committed to its guardianship on account of delinquency. ('17 c. 194 § 1)

By § 8 this act shall take effect January 1, 1918.

[4053—]2. Same—Illegitimate children—Powers and duties of board—It shall be the duty of the board of control when notified of a woman who is delivered of an illegitimate child, or pregnant with child likely to be illegitimate when born, to take care that the interests of the child are safeguarded, that appropriate steps are taken to establish his paternity, and that there is secured for him the nearest possible approximation to the care, support and education that he would be entitled to if born of lawful marriage. For the better accomplishment of these purposes the board may initiate such legal or other action as is deemed necessary; may make such provision for the care, maintenance and education of the child as the best interests of the child may from time to time require, and may offer its aid and protection in such ways as are found wise and expedient to the unmarried woman approaching motherhood. ('17 c. 194 § 2)

[4053—]3. Same—Co-operation with juvenile courts—Chief executive officer and assistants—It shall be the duty of the board to promote the enforcement of all laws for the protection of defective, illegitimate, dependent, neglected and delinquent children, to co-operate to this end with juvenile courts and all reputable child-helping and child-placing agencies of a public or private character, and to take the initiative in all matters involving the interests of such children where adequate provision therefor has not already been made. The board shall have authority to appoint and fix the salaries of a chief executive officer and such assistants as shall be deemed necessary to carry out the purposes of this act. ('17 c. 194 § 3)

[4053—]4. Same—County child welfare boards—Agents—The state board of control may when requested so to do by the county board appoint in each county three persons resident therein, at least two of whom shall be

women, who shall serve without compensation and hold office during the pleasure of the board, and who, together with a member to be designated by the county board from their own number and the county superintendent of schools, shall constitute a child welfare board for the county, which shall select its own chairman; provided that in any county containing a city of the first class five members shall be appointed by the state board of control. The child welfare board shall perform such duties as may be required of it by the said board of control in furtherance of the purposes of this act; and may appoint a secretary and all necessary assistants, who shall receive from the county such salaries as may be fixed by the child welfare board with the approval of the county board. Persons thus appointed, shall be the executive agents of the child welfare board. ('17 c. 194 § 4)

[4053—]5. Same—Agents where no child welfare board—In counties where no child welfare board exists the judge of the juvenile court may appoint a local agent to co-operate with the state board of control in furtherance of the purpose of this act, who shall receive from the county such salary as may be fixed by the judge with the approval of the county board. ('17 c. 194 § 5)

[4053—]6. Same—Additional duties of agents—Agents appointed pursuant to sections 4 [4053—4] and 5 [4053—5] may also, when so directed by the county board, perform the duties of probation and school attendance officers, and may aid in the investigation and supervision of county allowances to mothers. ('17 c. 194 § 6)

[4053—]7. Same—Expenses—The traveling and other necessary expense of the several members of the child welfare board, while acting officially as members of such board, and of the executive agents while exclusively employed in the business of the board, shall be paid, so far as approved by the county board, out of the general revenue fund of the county in the same manner as other claims against the county. ('17 c. 194 § 7)

[4053—]8. Conferences of board with other officials—For the purpose of promoting economy and efficiency in the enforcement of laws relating to children and particularly of the laws relating to defective, delinquent, dependent and neglected children, the state board of control may at such times and places as it deems advisable call an annual conference with officials responsible for the enforcement of such laws. When practicable such conference shall be held at the same time and place as the state conference of charities and correction. ('17 c. 224 § 1)

[4053—]9. Same—Expenses of probate judges—The necessary expenses of all probate judges invited to and attending such conferences shall be paid out of the funds of their respective counties. ('17 c. 224 § 2)

STATE TRAINING SCHOOL

4055-4060. [Repealed.]

See § [4060—]1.

[4061—]1. Certain sections repealed—Sections 4055, 4056, 4057, 4058, 4059, 4060 and 4067, General Statutes, 1913, are hereby repealed. ('17 c. 238 § 1)

4065. Agents to investigate homes, etc.—Salary—Said board may appoint an agent or agents at a salary of not more than one hundred dollars per month and expenses, and who under regulations prescribed by it, shall investigate the homes of inmates previous to their parole and have supervisions over those out on parole and those apprenticed and perform such other duties as it may require. They shall hold office during the pleasure of the board, devote their entire time to such work, occupy no other position and receive no other compensation for their services. They may enter any dwelling house or other building whenever they have reasonable cause to believe that any ward of said school is detained or concealed therein and take possession of such ward when found and every person who shall wilfully resist, obstruct or

interfere with them in the discharge of their duties shall be guilty of a misdemeanor. (Amended '17 c. 343 § 2)

4067. [Repealed.]

See § [4060—]1.

MINNESOTA HOME SCHOOL FOR GIRLS

[4069—]1. **Who admitted**—Any girl over the age of eight years and under the age of eighteen years, hereafter found guilty of any crime or offense for which, prior to the passage of this act, such girl, but for the fact that she was over seventeen years of age, could have been lawfully committed to the Minnesota Home School for girls, may hereafter be committed to said school. ('15 c. 293 § 1)

[4074—]1. **Terms of members of board of women visitors**—That on and after the first day of August, 1917, the board of women visitors of the Minnesota home school for girls shall be appointed by the governor of Minnesota in the following manner:

One member of said board shall be appointed for a period of one year commencing with the first day of August, 1917; two members thereof for a period of two years commencing with the first day of August, 1917, and the other two members of said board be appointed for a period of three years commencing with the first day of August, 1917, and that thereafter upon the expiration of their respective terms, members of the said board shall be appointed for a period of three years. ('17 c. 182 § 1)

Section 2 repeals inconsistent acts, etc.

HOSPITALS AND ASYLUMS FOR THE INSANE

[4109—]1. **Asylum for insane at Willmar**—There is hereby located and established at the city of Willmar, county of Kandiyohi, State of Minnesota, an asylum for the insane. ('17 c. 44 § 1)

Section 5 repeals inconsistent acts, etc.

By § 6 this act takes effect August 1, 1917.

[4109—]2. **Same—Hospital farm for inebriates transferred to asylum**—All lands, buildings, property and funds heretofore acquired and held for the foundation and maintenance of a hospital farm for inebriates at Willmar, Minnesota, are hereby transferred and set apart and appropriated to the establishment, support and maintenance of said asylum for the insane hereby provided for, and shall be subject to the same control and management as the property and funds now set apart for and used for the support and maintenance of an asylum for the insane. ('17 c. 44 § 2)

[4109—]3. **Same—Board of control**—Said hospital shall be under the control and management of the State Board of Control and all laws, rules and regulations now applicable to other insane asylums in the State of Minnesota, are hereby made to apply insofar as they may be necessary, to the insane asylum at Willmar. ('17 c. 44 § 3)

[4109—]4. **Same—Treatment of inebriates**—The State Board of Control is hereby authorized to continue the treatment of inebriates at the said State Hospital Farm for inebriates as now provided by law, but no inebriate shall be committed for treatment except as may be authorized and permitted by the State Board of Control. ('17 c. 44 § 4)

HOSPITAL FOR INEBRIATES

4111-4126. [Repealed.]

See § [7489—]20.

4128. **Tax on license fees—Inebriate fund—Certificates of indebtedness—**

Receipt by state of inebriate asylum tax as estopping state to question legality of incorporation of village paying same (see 130-100, 153+257). Municipal Corporations, ¶5.

CHAPTER 26

SCHOOLS FOR THE DEAF AND THE BLIND

4144, 4145. [Repealed.]

See § [4153—]1.

4146. Who may be admitted—Expenses—Any deaf or blind resident of the state of suitable age and capacity for instruction, may be received, kept and taught therein, under such conditions as the state board of control may prescribe. He shall be provided by the person legally liable for his support with sufficient funds to furnish him with proper clothing, postage and transportation. If any such person be a pauper, or if the person legally liable for his support be unable to make these provisions for him, of which facts the certificate of the probate judge shall be prima facie evidence, the county in which he has a residence shall annually on or before October 1 pay to the superintendent of the school of which he is an inmate a sum not exceeding forty dollars to be fixed by the board. Such sum shall be used only for clothing, postage and transportation for the pupil. The superintendent, on August 1 of each year, shall render to the county auditor and to the board of directors a detailed account thereof. (Amended '17 c. 346 § 1)

4149. [Repealed.]

See § [4153—]1.

4150. Certain children required to attend—Every parent, guardian or other person having control of any normal child between eight and twenty years of age, too deaf or too dumb or defective of speech to be materially benefited by the methods of instruction in vogue in the public schools, shall be required to send such child or youth to the school for the deaf at the city of Faribault, Minnesota, during the scholastic year of that school. Such child or youth shall attend such school, year after year, until discharged by the superintendent upon approval of the state board of control.

Such board may excuse the attendance when satisfied:

1. That the child is in such bodily or mental condition as to prevent his attendance at school or application to study for the period required.
2. That he is afflicted with such contagious or offensive disease or possesses such habits as to render his presence a menace to the health or morals of other pupils, or for any reason deemed good and sufficient by the superintendent with approval of the state board of control.
3. That the child is efficiently taught for the scholastic year in a private or other school, or by a private tutor, the branches taught in the public schools so far as possible.

Any such parent, guardian, or other person failing to comply with the foregoing section, shall, upon conviction thereof before a justice of the peace or other court, be deemed guilty of a misdemeanor, and shall be fined in a sum not less than five nor more than twenty dollars for the first offense, nor less than ten nor more than fifty dollars for the second and every subsequent offense, with costs in each case. Any person, who induces, or attempts to induce, any deaf or dumb child to absent himself or herself unlawfully from school, or employs or harbors any such child unlawfully from school, while said school is in session, shall upon conviction thereof, before a justice of the peace or other court, be deemed guilty of a misdemeanor, and shall be fined in a sum not less than five nor more than twenty dollars for the first offense, nor less than ten nor more than fifty dollars for the second, and every subsequent offense, with costs in each case. The principal teacher of every public school in the counties and the truant officers of the cities of St. Paul, Minneapolis and Duluth shall, within 30 days before the close of the school year succeeding the passage of this act, and at corresponding period each year

thereafter, furnish the county superintendent of schools or the board of education of the cities of St. Paul, Minneapolis, and Duluth, as the case may be, with the name, age, sex and address of parent or guardian of all normal children, who are too deaf or too dumb to be educated in the public schools, between the ages of eight and twenty years, inclusive living within the boundaries of his or her school district and who do not attend school. And the county superintendent of schools, or the board of education of the cities of St. Paul, Minneapolis and Duluth, shall certify forthwith the names of all such deaf children with address of parent, age and sex, to the superintendent of the Minnesota school for the deaf at the city of Faribault.

It shall be the duty of the county attorney to at once prosecute any case of parent or others unlawfully responsible, directly or indirectly, for the failure to place a deaf child or youth in a school for the deaf, when such case shall have been reported to him.

So far as the same are applicable all the provisions of this section shall be construed to include children who are too blind or defective of sight to be materially benefited by the methods of instruction in vogue in the public schools, for the purpose of securing their attendance at the state school for the blind. (Amended '17 c. 346 § 2)

4151. Field and employment agency for blind—There shall be established under the management of the state board of control a field and employment agency for the blind of said state. (Amended '17 c. 346 § 3)

4152. Superintendent—Powers and duties of agency—The state board of control shall annually appoint, upon the recommendation of the superintendent thereof, a competent person to conduct the work of said agency, under the direction of said superintendent.

Said agency shall collect statistics of the blind, including their present physical and mental condition, causes of blindness, capacity for education and industrial training, and any further information looking toward the improvement of their condition that may be desired.

Said agency shall give special attention to the cases of such blind youth as are eligible to attendance at the school for the blind, but are not in attendance thereat, or are not receiving adequate instruction elsewhere, and shall seek to secure such attendance by all practicable means.

Said agency shall endeavor to secure for the adult blind of the state such labor and employment as may be adapted to their respective training and capacity, and shall, so far as may be feasible, aid said adults in securing any provisions which may be made by the school for the blind for the betterment of their lot.

Said agency shall further be empowered to aid the blind (1) by home instruction and training, (2) by assisting them in securing tools, appliances and supplies, (3) by aiding in marketing the products of their labors, (4) by care and relief for the indigent blind, and in any other practicable means of alleviating their condition. (Amended '17 c. 346 § 4)

4153. Expenses—The state board of control is hereby authorized to defray the necessary expenses of the aforesaid agency from the appropriation for the current expenses of said board; provided, that in any county of this state, now or hereafter having a population of over one hundred fifty thousand (150,000) inhabitants and an assessed valuation of over two hundred fifty million dollars (\$250,000,000) exclusive of money and credits, the county board of said county is authorized to defray part or all of the necessary expenses of maintaining said agency and its work within said county from the general revenue fund of said county, not exceeding the sum of twelve hundred dollars (\$1,200), in any one year, said expenses to be paid as other claims against said county are paid. (Amended '17 c. 346 § 5)

See 1917 c. 185 § 1, amending 1913 c. 488 § 3.

[4153—]1. **Sections repealed**—Sections 4144, 4145 and 4149, General Statutes, 1913, are hereby repealed. ('17 c. 346 § 6)

[4153—]2. **Aid to blind students at universities, colleges, etc.**—That any blind person who is, and for five (5) years immediately preceding the making of his application for aid under this act has been, a resident of this state, and who is a regularly enrolled student pursuing any course of study, profession, art or science in any university, college, or conservatory of music, approved by the board of directors of the Minnesota School for the Blind, may in the discretion and under the direction of the said board, receive a sum or sums of money not exceeding Three Hundred Dollars (\$300.00) in any one year, for the purpose of defraying his necessary expenses, including those of a reader, while in attendance upon such university, college or conservatory, such expenditures to be made from the appropriations for the current expenses of the Minnesota School for the Blind, provided that not more than five (5) such blind persons shall receive such aid in any one year. ('15 c. 307 § 1)

By § 2 the act takes effect August 1, 1915.

CHAPTER 27

STATE PUBLIC SCHOOL

4155, 4156. [Repealed.]

See § [4168—]1.

4157. Admission of pupils—Children under fifteen years of age who are dependent on the public for support, abandoned, neglected, or ill treated, and who are sound of mind and free from disease, shall be received into said school upon commitment by a juvenile court. Whenever the number of such children shall exceed the capacity of the school, preference shall be given to the younger children and to those in greatest need, and the children received shall be divided among the several counties as justly as possible, taking into consideration the number of such children in each county and its population. The state board of control or superintendent shall notify the juvenile court of any county of the number of children that can be received from such county, whenever vacancies exist, or upon inquiry from the court. The children of deceased soldiers shall be given preference in admission. No child who can be received into the school shall be maintained in any poorhouse. Before any child under one year of age shall be ordered sent to said school, a written statement from the superintendent shall be obtained, showing that said child can be received and cared for in said school. (Amended '17 c. 214 § 1)

4158—4160. [Repealed.]

See § [4168—]1.

4161. Guardianship of child—A child admitted to said school shall remain therein and subject to the guardianship of the state board of control until a proper home is procured for him. The board may return or discharge each child when satisfied that he is unsound in mind, or diseased, or for other cause is not a proper inmate of this school. Upon such return or discharge the guardianship of the board shall cease and the child shall again be under the custody of his parents or guardian, or a charge upon the county from which he was sent. (Amended '17 c. 214 § 2)

4162. [Repealed.]

See § [4168—]1.

4163. Adoption and apprenticeship—

A child adopted by a widow after her husband's death is not entitled to the benefits of § 8208 subd. 9, of the Workmen's Compensation Act (133-265, 158+250). Master and Servant, § 388.

4167. State board of control to find homes for children—The state board of control is hereby authorized to receive, keep, maintain, train and find homes for such children as the controlling board or other managing authorities of any institution or association which is permitted to receive, find homes for or

secure adoption for children under the supervision of the state board of control may request. (Amended '17 c. 214 § 3)

4168. Same—Visitatorial powers—The state board of control is authorized to visit and investigate the conditions of all children for whom homes have been found by an institution within the state of Minnesota which has or may at any time have been permitted by said board to receive and find homes for dependent children. (Amended '17 c. 214 § 4)

[4168—]1. **Sections repealed**—Sections 4155, 4156, 4158, 4159, 4160, 4162 and 4169, General Statutes, 1913 are hereby repealed. ('17 c. 214 § 5)

4169. [Repealed.]

See § [4168—]1.

CHAPTER 28

RAILROADS, WAREHOUSES, AND GRAIN

RAILROAD AND WAREHOUSE COMMISSION

4178. Duties—

In general—Trial court held warranted in finding that order of railroad and warehouse commission directing certain changes in passenger and freight service upon a branch of its system was not unreasonable or unlawful (162+1079). Railroads, ¶9(2).

An order of the commission, pursuant to this section and § 4239, will not be disturbed by the courts, where it does not appear that the commission exceeded its powers (124-533, 144+771). Railroads, ¶9(2).

Tests of reasonableness of orders of the commission (see 130-57, 153+247). Railroads, ¶9(1).

Ordering new depot—Ordering a depot and waiting room is legislative or administrative, but its reasonableness is a judicial question. The reasonableness of the order in the present case held shown by the evidence (135-19, 159+1089). Railroads, ¶9(1, 2).

The commission has power to require a suitable depot, including a passenger waiting room, at a place where the public convenience renders the same reasonably necessary (123-463, 144+155; 135-19, 159+1089). Railroads, ¶58.

When a depot is ordered by the commission, the order may require that the depot, in its construction, shall comply with the fire ordinances of the village (135-19, 159+1089). Railroads, ¶226.

Commission has power to require facilities at one station equal to those furnished voluntarily at other stations (122-55, 141+1102). Railroads, ¶225.

Compelling Sunday local—An order of the commission compelling the resumption of a Sunday local passenger train, though prima facie reasonable under § 4192, will not be sustained on appeal to the supreme court, where the district court held such order unreasonable and void; it being contrary to the public policy of the state to compel Sunday labor (130-57, 153+247). Railroads, ¶9(2).

4184. Witnesses—

Cited (181-116, 154+750).

4186. Complaint by attorney general that rate is unreasonable—Duty of commission—

See notes under § 4285.

4187. Investigation without complaint—New rates—Notice—

See notes under § 4285.

4191. Appeals to district court—Any party to a proceeding before the commission, or any party affected by any order thereof, or the state of Minnesota, by the attorney general, may appeal therefrom to the district court of the county in which the complainants, or a majority of them, reside, or in case none of them reside in the state, or in a proceeding commenced by the commission on its own motion without complaint, to the district court of one of the counties in which the order of the commission requires a service to be performed or an act to be done or not to be done by the carrier or warehouseman; or in case of train service, to the district court of one of the counties through which the train runs, at any time within thirty days after service of a

copy of such order or the parties of record, as in this chapter provided, by service of a written notice of appeal on said commission, or on its secretary. Upon service of said notice of appeal, said commission, by its secretary, shall forthwith file, with the clerk of said district court to which said appeal is taken, a certified copy of the order appealed from, together with findings of fact on which the same is based in case appeals are taken to the district court of more than one county, they shall be consolidated and tried in the district court of the county to which the first appeal was taken. (Amended '17 c. 291 § 1)

130-57, 153+247; note under § 4192, post.

4192. Proceedings on appeal—Orders not appealed from—

On review of an order of railroad and warehouse commission relative to a railroad's train service, the court can only inquire whether the order is unreasonable or in violation of some constitutional or legal right of the railroad. A railroad appealing from an order of the railroad and warehouse commission relative to its train service has the burden of showing that the order is unreasonable (162+1079). Railroads, ¶9(2).

Orders of the commission being made prima facie reasonable, the burden of proving that an order compelling the resumption of a Sunday local passenger train imposed a financial burden was on the appellant railroad company; but, the compulsion of Sunday labor being contrary to public policy, a holding of the district court that the order was unreasonable will be sustained. The district court does not put itself in the place of the commission, and substitute its findings for those of the commission; nor does it set aside an order of the commission on its own conception of the wisdom thereof, but merely reviews the same, to determine whether it is lawful and reasonable (130-57, 153+247). Railroads, ¶9(2).

An order requiring establishment of a small station building, and the keeping of a custodian, at a flag station, is presumed to be valid and reasonable. Such presumption is not overcome in a case where the nearest station in either direction is seven miles, the tributary country is a prosperous farming district, producing an annual freight business of \$7,000, and the expense of providing the facilities ordered is not shown (123-463, 144+155). Railroads, ¶9(2).

4200. Appeals to supreme court—

Where, on appeal to the supreme court from an order of the district court affirming an order of the railroad and warehouse commission determining that certain charges exacted by a carrier were unlawful, an appeal bond was waived, but the district court subsequently granted a stay pending the appeal to the supreme court, the stay was collateral to the judgment, and the district court had jurisdiction to vacate the stay, and its action in so doing could not be interfered with by writ of prohibition issuing from the supreme court (161+164). Appeal and Error, ¶482.

4203. Dangerous crossings—Complaint—Hearing—

161+606.

4221. Stock scales in stock yards—Powers of commission—

Commission held empowered to order stock scales at particular places to prevent discrimination between different localities (122-55, 141+1102). Railroads, ¶225.

4222. Same—Private scales prohibited—

Recovery of compensation, under Const. art. 1 § 13, for injuries to property by the construction and operation of stockyards by a railroad company (see 161+501). Eminent Domain, ¶90.

4223. Same—Water in stockyards—Powers of commission—

In absence of statute, a railway company is not required to furnish feed or water to live stock in its pens awaiting shipment, unless the company has accepted the care and control thereof (125-125, 145+801). Carriers, ¶215(1).

4229. Freight over connecting lines to be transferred in certain cases—Joint through rates—

Where one railroad company owned a controlling interest in the stock of another company, the lines of the two companies connecting and being operated as a continuous line under one control, the two lines were to be regarded as a single road for the purpose of establishing rates, and such rates must be fixed under §§ 4348-4357, post, and not under this act (133-413, 158+627). Carriers, ¶12(1).

4230. Same—Powers and duties of commission—Notice and hearing—Schedule of rates—Revising rates—

133-413, 158+627; note under § 4229.

4231. Terms of connection with manufactories, etc.—

The state may, under its police powers, apportion the necessary expense of side track facilities between the railroad company and the industry receiving the benefit of the facilities in such manner as shall be found to be reasonable (135-323, 160+866). Railroads, ¶225.

4232. Reports to commission—Every carrier subject to supervision of the commission shall annually, on or before March 31st, unless additional time be granted, file with the commission a report verified by such carrier, or by its president, vice president, treasurer, comptroller, auditor, or receiver, in such form as the commission may prescribe, covering the year ending December 31st preceding said date and showing in detail the amount of capital stock issued; the amount and manners of payment therefor; the dividends paid; the surplus fund, if any; the number of stockholders; the funded and floating debts, and the interest paid or due thereon; the cost and value of all the carrier's property, franchises and equipments; the number of employes and officers, and the salary or wages paid each class; the amount expended for improvements, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all other sources; the operating and other expenses; the balance of profit or loss; and a complete exhibit of the financial operations of the year, with an annual balance sheet, the amount of land received as grants from the state and from the United States; the amount of such land sold and the average price received per acre; the amount unsold and its average appraised value per acre; information in regard to rates and regulations concerning fares and freights; agreements, arrangements or contracts with express, telegraph, sleeping and dining car companies, fast freight lines, and other common carriers, with copies of such contracts, agreements or arrangements; and such other matters as the commission may require, and the commission may prescribe a uniform system of accounts and the manner of keeping the same, and may designate from time to time to what account any items shall be charged. Any such carrier failing to comply with the provisions of this section, or with any order of the commission made thereunder shall forfeit, for each day's default, one hundred dollars, to be recovered in a civil action in the name of the state. (Amended '17 c. 17 § 1)

4237. Remedies cumulative—Attorney's fees—

This section preserves the common law remedies, though adding a statutory one (127-180, 149+134). Carriers, §13(3); Action, §35.

4239. Construction of chapter—

The commission has power to require the establishment of a depot, including a passenger waiting room, at a place where the public convenience renders the same reasonably necessary (123-463, 144+155). Railroads, §58, 226.

An order of the commission, under this section and § 4178, will not be disturbed by the courts, where it does not appear that the commission has exceeded its powers (124-533, 144+771). Railroads, §9(2).

4241. Physical valuation of railroad properties—Statements—The railroad and warehouse commission, hereinafter called the commission, is hereby authorized, at all times, to keep up the physical valuation of the railroad properties of this state, and to that end all railroad corporations under the supervision of the commission are required to furnish to the commission on June 30th of each year, unless further time be granted by the commission, and at such other times as the commission may require, a detailed statement showing changes in the physical conditions of its properties in this state and the elements of cost entering into such changes in both debits and credits of such property, and the distribution of the debits and credits, whether charged to operating or capital accounts, verified by the president, chief engineer, general auditor or comptroller, in such manner and form as the commission may prescribe, covering the year ending December 31st next preceding. (Amended '17 c. 22 § 1)

RAILROADS AND COMMON CARRIERS

4247. Common carriers defined—

Railroad company, operating stub line owned by lumber company, held a common carrier as to service performed thereon (129-121, 151+974). Carriers, §1, 4.

4248. Railroads, etc., defined—

129-121, 151+974; note under § 4247.

4256. Road crossings—

161+508.

The entire cost of extending a new street across a railroad right of way, including plank-ing over the railroad tracks, was properly imposed on the railroad company (124-107, 144+464). Railroads, ¶96.

This section, as amended in 1913, is a valid exercise of the police power, and is not a dis-guised attempt to levy a local assessment or tax by compelling the construction of sidewalks (130-480, 153+879). Railroads, ¶94(2).

4263. Fences and cattle guards—

Trial court's inadvertence in not calling jury's attention to the degree of care imposed by this section, upon a railroad in the maintenance of its right of way fence, to which no excep-tion was taken at the trial, was not reversible error (162+469). Appeal and Error, ¶263(3).

In action for killing of cows escaping from their pasture by reason of defect in defend-ant's right of way fence, evidence held to sustain finding that defect was proximate cause of their presence on track when struck (162+469). Railroads, ¶443(6).

Care required as to trespasser on track at place where fences have been constructed (see 131-281, 154+1088). Railroads, ¶359(1).

Where the death of a boy nine years old resulted from his attempting to steal a ride on a freight train, the failure of the railroad company to fence the right of way was not the prox-i-mate cause of the death (130-513, 153+1066). Railroads, ¶279.

4269. Ditches and culverts—

This act is not an unreasonable exercise of the police power of the state. A ditch volun-tarily constructed by a railway company prior to the taking effect of this act must be kept open as therein provided (132-265, 156+121). Railroads, ¶108.

4273. Same—Distance between structures or obstructions and center line of tracks—Height of overhead obstructions—Exceptions—Unlawful to erect certain structures, etc.—That on and after the passage of this act, it shall be unlawful for any common carrier, or any other person, to erect or reconstruct and thereafter maintain on any standard gauge road on its line or on any standard gauge side track used in connection therewith, for use in any traffic mentioned in Section one of this act [4272], any warehouse, coal chute, stock pen, pole, mail crane, stand pipe, hog drencher, or any permanent or fixed structure or obstruction, or in excavating allow any em-bankment of earth or natural rock to remain upon its line of railroad, or on any side track used in connection therewith at a distance less than eight feet measured from the center line of the track, which said structure or obstruc-tion adjoins on standard gauge roads; nor shall any overhead wires, bridges, viaduct or other obstruction passing over or above its tracks as aforesaid be erected or reconstructed at a less height than twenty-one (21) feet, measured from the top of the track rail.

Provided, however, that this act shall not be construed to apply to yards and terminals of depot companies or railway companies used only for pas-senger service. But, nevertheless in the event of personal injury sustained by any employé of any such company in this proviso mentioned, by reason of non-compliance with the provisions of this act, such employé, or in case of his death, his personal representative, shall have all the rights, privileges and immunities enumerated in Section 9 hereof [4280]. ('13 c. 307 § 2, amended '15 c. 171 § 1)

4274. Same—Permits in certain cases or classes of cases—That the rail-road and warehouse commission may upon application made, after a thor-ough investigation in any particular case or class of cases, permit any com-mon carrier to which this act applies to erect any overhead or side obstruc-tion at a less distance from the track than herein provided for, when in the judgment of said commission a compliance with the clearance prescribed herein would be unreasonable or unnecessary. ('13 c. 307 § 3, amended '15 c. 171 § 2)

4284. Side tracks to elevators, mills, etc.—Every such company, upon written demand of the owner of any grain warehouse or mill of not less than five thousand (5,000) bushels capacity, adjacent to the right of way of such company and at or near any regular station thereof, shall construct, maintain and operate at its own expense, proper side tracks, connecting such ware-house or mill with the tracks of such railroad, and afford the owner thereof proper and reasonable facilities for shipment therefrom. Should additional

right of way be required for such side track, the cost and expense of procuring it shall be paid by the owner of said mill or warehouse. Such company shall also construct, maintain, and operate side tracks connecting with its road any such grain warehouse, dock, wharf, mill, coal yard, quarry, brick or lime kiln, sand or gravel pit, crushed rock or concrete plant, or manufactory adjacent thereto as shall be required and on such terms as may be fixed by the commission on application of either party. (Amended '17 c. 287 § 1)

The state under its police power may require a railroad company to provide such side track facilities to industries adjacent to its tracks as shall be found to be necessary and reasonable under all the circumstances, and may apportion the necessary and reasonable expense therefor between the company and the industry involved (135-323, 160+866). Railroads, ~~§~~225.

4285. Charges to be reasonable—

Cited (128-25, 150+172).

Business competition is essential to a recovery of rate differentials by a shipper who is discriminated against, where no proof is made of damage other than the difference in the rates charged. Evidence held to show such business competition. Such differentials must be computed upon the basis of equal tonnage, but such discrimination should be considered with reference to a reasonable time before and after the disfavored shipment, and hence may arise from shipments on different dates. The federal rule of damages applied as to a part of the shipments constituting interstate commerce. Payment to the carrier, by a favored shipper, of the difference between the discriminatory rate and the statutory rate, is no defense to an action for discrimination (127-180, 149+134). Carriers, ~~§~~201.

Contract made prior to statutory rate regulation is no justification for discrimination in favor of the contracting party and against those compelled to pay the statutory rate (127-180, 149+134). Carriers, ~~§~~13(3).

Switching charge by railroad company on stub tracks owned by lumber company held invalid (129-121, 151+974). Carriers, ~~§~~188.

The shipper's common-law remedy for discrimination is not taken away by the statute; it providing no civil remedy (121-488, 142+3, 45 L. R. A. [N. S.] 612). Carriers, ~~§~~201.

4286. Passengers—Maximum rates—No railroad company owning, operating, or using a line of railroad within, or partly within the state of Minnesota shall charge, collect or receive as compensation for transporting any passenger and his or her ordinary baggage, not exceeding in weight one hundred fifty (150) pounds any sum or amount in excess of the following prices, viz.: for all distances for all companies the gross earnings of whose passenger trains, as reported to the railroad and warehouse commission in the then last report thereon, equalled or exceeded the sum of one thousand two hundred dollars per mile for each mile of road operated by said company, on which regular passenger service is maintained, as hereinafter provided, two cents per mile, and for all companies whose earnings reported as aforesaid were less than one thousand two hundred dollars per mile of road operated by said company, three cents per mile: Provided, that in the future, whenever the earnings of any company doing business in this State, as reported to the railroad and warehouse commission at the close of any year, shall increase so as to equal or exceed the sum of one thousand two hundred dollars per mile of road operated by said company, then in such case said company shall thereafter, upon the notification of the railroad and warehouse commission, be required to only receive as compensation for the transportation of any passenger, his or her ordinary baggage, not exceeding in weight one hundred fifty (150) pounds, a rate of only two cents per mile as hereinbefore provided. Provided further, that in computing the passenger earnings per mile of any company the earnings and the mileage of all branch roads owned, leased, controlled or occupied by such company, exclusive of all spurs and branches over which such company does not operate each way daily, except Sunday, at least one passenger train, or mixed train having at least two passenger coaches or one passenger coach and baggage car, shall be included in the computation, and the rate of fare shall be the same on all lines owned, leased, controlled or occupied by such company: Provided further, that no company shall charge, demand or receive any greater compensation per mile for transportation of children of the age of twelve years or under than one-half of the rate herein prescribed: Provided further, that any railroad company may charge a minimum fare of five cents for each passenger transported over its road, whenever cars are propelled or moved by

motive power other than steam: The provisions of this section shall apply to all railroad companies operating lines of railroad in this State. ('13 c. 536 § 1, amended '17 c. 23 § 1)

A proper construction of this section prior to amendment permitted a railroad company to charge three cents per mile for the first five miles of a passenger's trip, and two cents per mile for the additional distance (128-25, 150+172). Carriers, *§*12(4).

4288. Passengers—Maximum rates—

The reasonableness of rates prescribed by statute is purely a judicial question (130-144, 153+320, L. R. A. 1916B, 764). Carriers, *§*18(1).

An injunction restraining a railroad company, at the suit of stockholders, from putting in force the rates fixed by this section, suspended the operation of the statute during the pendency of the action, so that during that time an indictment would not lie for noncompliance with the statute (130-144, 153+320, L. R. A. 1916B, 764). Carriers, *§*18(6); Criminal Law, *§*1.

Cited in dissenting opinion (128-25, 150+172).

4289. Same—Penalties for violation—

130-144, 153+320, L. R. A. 1916B, 764; note under § 4288.

4290. Freight rates—Right of carrier in first instance—Uniform classification—

Switching charge by railroad company on stub track owned by lumber company held invalid (129-121, 151+974). Carriers, *§*188.

4292. Same—Rates not to be changed without order, etc.—

135-271, 160+688; note under § 4299, post.

See notes under § 4285.

A schedule of rates promulgated by the railroad and warehouse commission under § 4353 does not apply to the switching of cars within a given shipping point, and hence a switching charge voluntarily fixed by a railroad company for transfer of cars to and from a particular industry was not unlawful (130-272, 153+610). Carriers, *§*12(3).

4294. Same—Application for change—Notice—Hearing—

135-271, 160+688; note under § 4299, post.

4298. Classification of commodities—

Cited (130-144, 153+320, L. R. A. 1916B, 764).

135-271, 160+688; note under § 4299, post.

4299. Same—Maximum rates—

Cited (130-144, 153+320, L. R. A. 1916B, 764).

Where, when this act went into effect, a carrier's tariff on fence posts in carload lots was 75 per cent. of its lumber rates, and this act reduced the rate on lumber, and the carrier did not obtain the consent of the railroad and warehouse commission to a new schedule established by it, or to a change of the rules and regulations governing the rates on fence posts as they were when the law went into effect, the legal rate for fence posts remained at 75 per cent. of the lumber rate as fixed by this act (135-271, 160+688). Carriers, *§*12(1).

The existence for a time of an injunction restraining enforcement of this act, did not, during such time, render the rates prescribed by the statute invalid, where the judgment in which the injunction was awarded was reversed on appeal, and the statute pronounced valid (133-93, 157+996). Carriers, *§*12(1).

4300. Same—When distance not given—Weight of carload—

Cited (130-144, 153+320, L. R. A. 1916B, 764).

4301. Same—Excess rates prohibited—

Cited (130-144, 153+320, L. R. A. 1916B, 764).

Injunction against enforcement of statutory rates as affecting time of accrual of action to recover excessive freight rates paid (see 135-45, 159+1062). Limitation of Actions, *§*111.

A carrier having two lines separating two intrastate points is required to transport a shipment over that line which affords the shipper the cheaper rate, in absence of a selection of the route by the shipper, and in absence of special circumstances showing that the carrier subserved the best interests of the shipper in selecting the longer route (133-93, 157+996). Carriers, *§*79.

4302. Same—Powers and duties of commission—

Cited (130-144, 153+320, L. R. A. 1916B, 764).

4303. Same—Duties of railroad companies—Penalties—

Cited (130-144, 153+320, L. R. A. 1916B, 764).

4304. Same—Existing rates—

Cited (130-144, 153+320, L. R. A. 1916B, 764).

4305. Duties of railroad companies—Penalties—

See notes under § 4285.

4306—Same—Continuation of prior act—

See notes under § 4285.

4307. Failure to adopt rates—Duty of attorney general—Duty of carrier—Reports—

If more than legal rates have been exacted, the right of recovery does not necessarily depend upon statute law (135-271, 160+688). Carriers, ¶12(1).

4308. Same—Carrier to pay to commission excess rates—

135-271, 160+688; note under § 4307.

4309. Same—Failure to pay excess rates—Duty of commission and attorney general—Claims—Unclaimed amounts—

135-271, 160+688; note under § 4307.

4310. Same—Failure of carrier to keep accounts, etc.—Penalty—

135-271, 160+688; note under § 4307.

4311. Same—Certain provisions repealed—

135-271, 160+688; note under § 4307.

4312. Same—When to take effect—

135-271, 160+688; note under § 4307.

4314. Same—Claims, when adjusted and paid—How presented—

126-138, 147+960, Ann. Cas. 1915D, 823; note under § 4316.

4316. Same—Penalty for failure—Fraudulent claims—

This section is not unconstitutional either as class legislation, depriving of due process of law, or denying equal protection of the laws (126-138, 147+960, Ann. Cas. 1915D, 823). Constitutional Law, ¶208(3), 247, 303.

This section does not apply to interstate transactions (131-152, 154+954). Commerce, ¶61(1).

4321. Common-law liability not to be limited—

Carrier's liability as insurer may be limited by contract. Carrier may require stipulation that goods must be removed within 48 hours after arrival at destination (122-453, 142+727). Carriers, ¶147, 157.

Reasonableness of contract limiting liability (121-258, 141+164, L. R. A. 1915D, 644). Carriers, ¶218(1).

Burden of proof as to negligence (121-258, 141+164, L. R. A. 1915D, 644). Carriers, ¶228(1).

A stipulation in a lease from a railroad company to an elevator company that the railroad company should not be liable for the loss of grain in its possession by fire communicated from the elevator held not to relieve the railroad company of liability for negligence (132-151, 156+117). Railroads, ¶469.

121-258, 141+164, L. R. A. 1915D, 644. Carriers, ¶227.

4322-4329. [Repealed.]

See § [4434-]55.

4325—161+411; note under § 4326.

4326—The provision making a bill of lading, acquired in good faith and for value, conclusive that the carrier issuing the same received the goods therein specified, can, since the Carmack amendment, have no application to an interstate bill of lading (161+411). Commerce, ¶8(12).

4332. Preferences forbidden—

Cited (128-25, 150+172).

Declaratory of common law (121-488, 142+3, 45 L. R. A. [N. S.] 612). Carriers, ¶13(1), 199.

Remedy at common law not impaired. Measure of recovery for discrimination (121-488, 142+3, 45 L. R. A. [N. S.] 612). Carriers, ¶201.

A carrier may, after loss or damage to goods, waive provisions of its contract limiting the time within which an action may be brought therefor (131-217, 154+1076). Carriers, ¶160.

Where railroad has furnished stock scales to 54 of its stations in the state, held an unlawful discrimination to refuse to install a scale at a particular station as ordered by the railroad and warehouse commission (122-55, 141+1102). Railroads, ¶225.

4334. Rebates, etc., forbidden—Penalty—

Statute is declaratory of common law (121-488, 142+3, 45 L. R. A. [N. S.] 612). Carriers, ¶13(1), 199.

Statute does not take away common-law remedy. Measure of recovery for discrimination (121-488, 142+3, 45 L. R. A. [N. S.] 612). Carriers, ¶201.

4335. Free passes, etc., forbidden—Exceptions—From and after Jan. 1st, 1908, it shall be unlawful for any person, association, co-partnership, or corporation, or any representative thereof, to offer, give, or in any manner fur-

nish to any person, either for himself or another, any free pass or frank, or any special privilege or reduction in rate withheld from any other person for the traveling accommodation or transportation of any person or property, or the transmission of any message or communication except to persons included within the classes hereinafter designated and limited, and it shall also be unlawful for any person or persons not included within the classes hereinafter excepted or limited to solicit or receive, either for himself or another, from any person, association, co-partnership or corporation, or use in any manner or for any purpose any free pass or frank or special privilege withheld from any person for the traveling accommodation or transportation of any person or property or the transmission of any message or communication; provided, however, that nothing contained in this act shall be construed to prohibit or to make unlawful the issuing or giving of any such free ticket, free pass or free transportation to any person or persons within the classes hereinafter excepted or limited or the acceptance or use of the same by persons within such classes, that is to say, officers, bona fide agents, surgeons, physicians, attorneys and employés of such railroad or other companies or persons affected by this act and dependent members of their families, the duly elected representatives of railroad labor organizations, children under 12 years of age, ministers of religion, secretaries of Young Men's Christian Associations, persons exclusively engaged in charitable and eleemosynary work, indigent, destitute and homeless persons, and such persons when transported by charitable societies or hospitals or by public charity, and necessary agents employed in such transportation, inmates of national homes or state homes for disabled volunteer soldiers, inmates of soldiers' and sailors' homes, including those entering and returning from such homes, and boards of managers of such homes, postoffice inspectors, custom inspectors and immigration inspectors; witnesses of said railroad companies attending any legal investigation in which said company is interested; officials and linemen of telegraph and telephone companies; ex-employés retired from service on account of age or because of disability sustained while in the service of said railroad company, and the dependent members of their families, or the widows or dependent children of employés killed or dying while in the service of such railroad company; necessary care-takers of live stock, poultry, vegetables and fruit, including transportation to and from the point of delivery, employés on sleeping and express cars, railway mail service employés, news-boys on trains, baggage agents and persons injured in wrecks and physicians and nurses attending them; providing that one trip pass for a discharged employé and his family may be issued for use within 30 days of such discharge.

Provided further that the provisions of this act shall not be construed to prohibit and make unlawful the interchange of passes, and express and other franks for the officers, bona fide agents, surgeons, physicians, attorneys and employés and the dependent members of their families, of any person or company affected by this act from doing any of the things prohibited hereby free, with the object of providing relief in cases of general epidemic, pestilence or calamitous visitation.

Provided further, that the provisions of this act shall not be construed to prohibit or make unlawful the interchange of passenger transportation and message service between such railroad companies and telegraph companies and provided further that the provisions of this act shall not be construed to prohibit or make unlawful the interchange between railroad, express, telegraph and telephone companies of the transportation of persons and property, and the transmission of messages.

Provided further, that no free transportation shall be issued or given to any person when such person is a member of, employed by or in any way connected with any political committee or a candidate for or incumbent of any office or position under the constitution and laws of this state except as herein provided, and except that any railroad company may issue free passes to its employés while occupying office or position other than judicial under a municipality or public school district, or while acting under appointment as a notary public in this state. (Amended '17 c. 53 § 1)

[4337—]1. **Free transportation of soldiers in time of war**—Whenever a state of war exists between the United States of America and any other nation it shall be lawful for any common carrier engaged in the transportation of passengers within this state to transport any soldier, sailor or marine of the United States or any member of the Minnesota National Guard or of the organized state militia free of charge when in uniform for trips wholly within the State of Minnesota. ('17 c. 375 § 1)

[4338—]1. **Rates for transportation of sand, gravel and rock for public roads, etc.—Power of commission**—The railroad and warehouse commission is hereby authorized to make schedules of intra-state rates for railroads for the transportation of sand, gravel and crushed rock to be used in the construction of public roads and streets by or under the direction of public authorities, which rates may be lower than those charged for transporting the same kind of freight for all other purposes. ('17 c. 495 § 1)

[4340—]1. **Suburban railways in cities and villages—Passengers, baggage and freight**—The governing body of any city or village may by a revocable license, or by a franchise duly approved by the electors in accordance with its charter, permit a suburban railway using other than steam power to enter such city or village for the purpose of carrying passengers, baggage and light freight. Such license or franchise shall specify its terms and conditions and shall designate the route to be followed, but shall not be construed as a contract between the parties. ('15 c. 310 § 1)

[4340—]2. **Same—Joint use of tracks, etc.—Power of commission to fix compensation, etc.**—Where the designated route is already provided with tracks and other equipments, said suburban railway and the corporation owning or controlling said tracks and equipments may enter into an agreement for the joint use thereof upon equitable terms. Upon the failure of the interested parties to agree among themselves, the State Railroad and Warehouse Commission, when applied to by either party or by the city or village council, shall hear the matter and by an order fix the rate of compensation to be paid by such suburban railways for the use of the tracks, overhead wires, electric current and other accessories to be used in the operation of such suburban railway under the schedule established and the license or franchise granted by such city or village, and such suburban railway shall thereupon be entitled to the use of said tracks, overhead wires, electric current and other accessories under the terms of said order, and may enforce said right by mandamus proceedings in the courts of this state. ('15 c. 310 § 2)

[4340—]3. **Same—Cars and equipment—Ordinances, etc.**—That said suburban railways shall provide for operation within such city or village limits, cars and equipment substantially similar to the cars and equipment used by the street railways operating upon the tracks over the route so designated, and while operating upon such street railway tracks, shall comply with and be subject to all ordinances, laws, traffic rules, time schedules and regulations applicable to such street railways as the city council or other governing body may from time to time adopt, except where such suburban railways are specifically exempted by any such council from compliance with any ordinances or other municipal regulation of such city or village. ('15 c. 310 § 3)

4341. Pooling forbidden—

Cited (121-488, 142+3, 45 L. R. A. [N. S.] 612).

4342. Public schedule of rates—

Cited (121-488, 142+3, 45 L. R. A. [N. S.] 612; 130-272, 153+610).

4344. Schedules to be filed—

Tariff rates for transportation of goods and property by common carriers are prescribed by law, of which all concerned are charged with notice. Carrier of goods from point without to point within state is not liable to purchasers of goods from consignee for its agent's error in quoting tariff rate on connecting line to another point within state, or for erroneous statement that it would go forward on through tariff rate (162+519). Carriers, ~~6~~30.

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4345. Unlawful charges—

See notes under § 4334.

4346. Switching charges—

Where a railroad and terminal switching company was absorbed by railroad company as a terminal switching facility, order of railroad and warehouse commission abolishing switching charges by the railroad and terminal company was not unlawful or unreasonable. Order of state railroad and warehouse commission requiring a railroad which had taken over a switching company to continue operation of company's lines without switching charge for services rendered was within its jurisdiction (162+689). Carriers, ¶12(1).

4347. Long and short haul—

Cited (128-25, 150+172).

4348. Unjust discrimination in freight rates prohibited—

Carrier, in delivering goods to point within state from point without state, was under no legal duty to correctly quote purchaser from consignee rates upon connecting line to another point within state (162+519). Carriers, ¶30.

This act applies to movement of cars or commodities between stations, and not to switching or like movements within a shipping point, such as a village or city (130-272, 153+610). Carriers, ¶12(3).

Where one railroad company owned a majority of the stock of another company, the tracks of the two companies connecting and being operated under one management as a continuous line, the two roads were to be considered as a single line for the purpose of establishing freight rates, and such rates must be fixed under this act, and not under §§ 4229, 4230, ante (133-413, 158+627). Carriers, ¶12(1).

4349. Same—Other evidence not excluded—Application to all railways—

133-413, 158+627; note under § 4348.

4350. Same—Rates per 100 pounds, per ton, per car, etc., in like class, to be the same in proportion—

133-413, 158+627; note under § 4348.

4351. Same—Application of act—Terms defined—

133-413, 158+627; note under § 4348.

This act applies to movement of cars or commodities between stations, and not to movements within a shipping point, such as switching or like movements (130-272, 153+610). Carriers, ¶12(3).

4352. Same—Powers of commission not abridged, etc.—

133-413, 158+627; note under § 4348.

4353. Same—Commission to make schedule of reasonable maximum rates for each railroad—Class and commodity rates—Switching or drayage—Feeding cattle—Common rate points—The Board of Railroad and Warehouse Commission of this state is hereby empowered and directed to make for each of the railroad corporations doing business in this state, as soon as practicable, a schedule of reasonable maximum rates of charges for the transportation of freight and cars on each of said railroads and said power to make schedule shall include the classification of such rates and it shall be the duty of said commission to make such classification and said schedules so made by said commission shall, in all suits brought against any such railroad corporation wherein is in any way involved the charges of any such railroad corporation for the transportation of any freight or cars or unjust discrimination in relation thereto be deemed and taken in all the courts of this state as prima facie evidence that the rates therein fixed are reasonable and just maximum rates of charges. The commission may fix different schedules of class or commodity rates for railroads of the same class. The maximum rates shall not apply to switching or drayage rates. The commission may define switching and drayage service to apply to the movement of traffic within and between points, and fix reasonable maximum rates for the same, which shall be independent of any rates that may be made for line haul transportation, and in the making of said rates the commission shall not be governed entirely by the distance principle established by this act. The commission may fix rates for feeding cattle which shall apply to out movement from terminal markets. The commission may unite two or more stations or commercial centers into a common rate point, and may designate the classes of freight which shall take common rates, and fix the mileage that shall govern between the common rate point

and any or all other points in the state. The distances so fixed shall not apply as a measure of the rate for the movement of the same class of freight for similar distances between other points. (Amended '15 c. 367 § 1)

133-413, 158+627; note under § 4348.

This section, as amended by 1915 c. 367, is not violative of Const. art. 3 § 1, as an attempt to delegate legislative power (134-217, 158+982). Carriers, ¶2; Constitutional Law, ¶62.

An order of the railroad and warehouse commission under this section, as amended by 1915 c. 367, establishing St. Paul, Minneapolis, Minnesota Transfer, Hopkins, and St. Louis Park a common point, held not invalid as a denial of due process of law, contrary to the fourteenth amendment of the federal constitution (134-217, 158+982). Constitutional Law, ¶298(2).

This act has reference to movements of cars and commodities between stations, and not to switching and like movements within a shipping point, such as a city or village; this construction being supported by the amendment in 1915 of this section (130-272, 153+610). Carriers, ¶12(3).

4354. Same—Classification of railroads as to gross earnings—

133-413, 158+627; note under § 4348.

4355. Same—Shipment over two or more lines—Reasonable rates—

133-413, 158+627; note under § 4348.

4356. Same—Penalty for violation—

133-413, 158+627; note under § 4348.

4357. Same—Prosecution, in what counties—Duty of county attorney, etc.—

133-413, 158+627; note under § 4348.

4359. Transfer facilities—

Cited (130-272, 153+610).

Where two railroad companies constructed a certain railroad and owned all its capital stock and bonds, held, that such railroad constituted one of the terminal facilities of the controlling companies, and the latter could not make a special charge for switching shipments thereon, where they made no such charge for shipments to industries located on their own lines; and they could not obviate the discrimination by making a charge on their own lines, where the line haul included the switching charges (134-169, 158+817). Carriers, ¶199, 201.

4374. Same—Damages not offset by demurrage—Live stock—

Evidence of injuries from delay in transportation (121-278, 141+161).

4379. Transportation of live stock—Every such company shall furnish, at proper points designated by it, suitable cars for the transportation of live stock of all kinds, and shall transport the same at a rate not to exceed the highest rate and minimum weight charged by such company for any kind of stock in such car, except that the cattle rate and minimum weight will apply when by the use of same a lower charge results. Stock of different kinds shall be carried in the same car, at the option of the shipper, and at his expense for properly partitioning the car. Any such company failing to comply with any provision of this section shall forfeit to the party aggrieved not less than one hundred dollars nor more than five hundred dollars. (Amended '15 c. 254 § 1)

4381. Livestock arriving at terminal—Time for delivery at stockyards and unloading—That all live stock arriving at any terminal over any line of railroad in this state, which is billed to any stock yard within twenty miles of said terminal where live stock is bought, sold or transferred, shall be delivered to chutes of such stock yard within five hours after its arrival at such terminal unless prevented by an act of God; of which time any terminal railroad whose principal business is transferring live stock from terminal interchanging points to stock yards for unloading shall be allowed not more than three hours time of the said six hours after the live stock has been delivered to it in which to deliver said live stock to the stock yard chutes. (Amended '17 c. 378 § 1)

4385. Shipment of cream—

Creamery company held not entitled to restrain carrier from complying with this act, and the attorney general from enforcing it, on the ground that compliance with the act would

interfere with plaintiff's business, plaintiff claiming that the act is unconstitutional (124-239, 144+764, 49 L. R. A. [N. S.] 951). Injunction, §105(2).

This section applies to all railroad companies doing business in the state, and to shipments arising without and terminating within, as well as to those originating within and terminating without, the state, and as such an unreasonable interference with interstate commerce (125-332, 147+109). Commerce, §61(1).

4386. Same—Penalty for violation—False statements, etc.—

125-332, 147+109; note under § 4385.

[4388—]1. **Stock cars to be cleaned monthly**—It shall be the duty of every railway company operating a railroad within this state to cause every railroad car used in the transportation of live stock in this state to be properly and thoroughly cleaned by removing all litter, manure and refuse from such car once in each month between the first day of March and the first day of December of each year. ('15 c. 41 § 1)

[4388—]2. **Same—Certain stock cars to be cleaned before loading**—It shall be the duty of every railway company operating a railroad within this state to cause to be cleaned and properly disinfected immediately before loading every car used for transporting live stock for feeding or breeding purposes from any railway terminal point in this state to any other point in this state. ('15 c. 41 § 2)

[4388—]3. **Same—Powers and duties of live stock sanitary board**—The State Live Stock Sanitary Board is hereby authorized to make and to change from time to time all reasonable rules and regulations for the disinfection of cars used for the transportation of live animals within this state. The said board shall furnish from time to time to each railway company operating a railroad within this state copies of said rules. It is hereby made the duty of every such railway company to obey each and every one of said rules. ('15 c. 41 § 3)

[4388—]4. **Same—Penalty for violation**—Any railway company violating any of the provisions of this act shall be guilty of a misdemeanor and shall on conviction thereof be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00). ('15 c. 41 § 4)

4390. Depots and waiting rooms—

As to who is a "through passenger" (see 123-153, 143+263, 48 L. R. A. [N. S.] 262). Carriers, §247(1).

As to a passenger suffering injuries in Iowa, held, that a railroad company carrying passengers is obliged reasonably to heat its stations in winter for the accommodation of passengers, but such duty is owing to passengers only (123-153, 143+263, 48 L. R. A. [N. S.] 262). Carriers, §282, 286(8).

4391. Certain depots to be kept open—

This section may be considered as indicating the legislative policy in a proceeding not brought thereunder (123-463, 144+155).

4399. Trains to stop at stations—

Whether defendant violated the duty prescribed by this section, and whether plaintiff was guilty of contributory negligence, held for the jury (124-517, 145+746). Carriers, §320(29); (130-246, 153+518). Carriers, §320(26), 347(11).

Negligence in discharging passengers (121-511, 141+845). Carriers, §303(1).

A person entering a train to assist an outgoing passenger is within the protection of this section, and is entitled to a reasonable time to alight (124-517, 145+746). Carriers, §304(3).

Carrier is required to afford reasonable opportunity for passengers on freight train to alight in safety (128-193, 150+800). Carriers, §280(5).

4406. Stopping trains at crossings—

Where it appeared that a railroad company had been violating this section, an order of the railroad and warehouse commission requiring that trains be brought to a stop before passing a junction was proper (124-533, 144+771). Railroads, §240.

[4408—]1. **Toilet facilities required in interurban cars**—The railroad and warehouse commission may upon a hearing, order the installation of sanitary toilet facilities in any interurban and suburban car operating in regular service under its jurisdiction, and failure of any company or corporation owning and operating such car to comply with such order, shall subject it to a fine of not less than one hundred dollars (\$100.00).

This act shall not apply to cars running between the cities of St. Paul and Minneapolis nor to any such interurban or suburban cars operated over a distance of less than eighteen miles beyond the city limits of either of said cities. ('17 c. 449 § 1)

[4408—]2. **Same—Power of local authorities**—The authorities of any municipality through which such cars are or may be operated shall have the right to regulate the closing of such closet within such municipalities. ('17 c. 449 § 2)

4421. Headlights on certain locomotives—

The use of a 1,500 candle power electric headlight on an engine used in switching operations, the effect of which was to blind and dazzle the eyes of a switchman's helper, so that he was run over and killed, held to justify a finding of negligence (133-257, 158+232). *Master and Servant*, Ⓒ278(18).

[4423—]1. **Abandonment of road—Fines to municipalities**—Whenever a railroad or other common carrier is fined on account of an abandonment or tearing up of its tracks, or any part thereof, such fine shall go to such municipalities as have been injured by such action through disturbance of their manufacturing or business interests or otherwise. ('15 c. 317 § 1)

[4423—]2. **Same—Disposition, how made**—The disposition of such fine shall be determined by the district court of the district in which the prosecution was conducted and shall be heard as are ordinary civil actions upon petition of such municipalities setting forth the facts, but no such petition shall be filed later than six months after the payment of such fine. Such fines shall not be turned into the state treasury until such petitions, if any, have been disposed of and shall be distributed in accordance with the judgment of the court. ('15 c. 317 § 2)

[4423—]3. **Same—Fines paid when**—This act shall apply to any fines paid since January 1, 1915, irrespective of when prosecution was instituted, provided that petition be filed within six months after this act goes into effect, and to provide for such cases the sum of two thousand dollars (\$2,000) is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, and upon presentation of a certified copy of the judgment of any district court showing any municipality to be entitled to any such fine, or part thereof, the state auditor shall draw a warrant upon the treasurer in favor of such municipality for the amount named in said judgment. ('15 c. 317 § 3)

4426. Fire caused by engine—Insurable interest—

Negligence in permitting spread of fire (121-357, 141+491, 45 L. R. A. [N. S.] 215). *Railroads*, Ⓒ457.

Evidence held to support a verdict for plaintiff (121-439, 141+523). *Railroads*, Ⓒ482(1).

Proximate cause of injury (121-357, 141+491, 45 L. R. A. [N. S.] 215). *Railroads*, Ⓒ482(1).

Contributory negligence of owner of property, suing under Wisconsin statute, considered (123-423, 144+145, Ann. Cas. 1915A, 496). *Railroads*, Ⓒ484(6).

4427. Negligence of fellow servant—

132-195, 156+272.

In general—Evidence held insufficient to sustain a verdict, it being merely conjectural as to whether a brakeman was injured by a cause for which the railroad company was liable (124-487, 145+393). *Master and Servant*, Ⓒ276(2).

A railroad foreman and crew held not negligent in the method pursued in replacing defective ties with new ones, so as to render the railroad company liable for injuries to plaintiff's foot (125-12, 145+399). *Master and Servant*, Ⓒ279(4).

Evidence held to show negligence in backing a train at excessive speed without maintaining a lookout and giving the customary signals (123-109, 143+121). *Master and Servant*, Ⓒ278(18).

Contributory negligence—Where there is a custom or practice to keep a lookout on backing trains and to ring the bell, a question of an employe's contributory negligence, who relied on such precaution, was for the jury (123-109, 143+121). *Master and Servant*, Ⓒ28, 289(28).

Contributory negligence and assumption of risk on the part of employes attempting to couple cars on a switch track, defeating recovery for their death caused by the switching of cars against the cars on which they were working, held, under the evidence, a question for the jury (127-381, 149+660). *Master and Servant*, Ⓒ288(3), 289(33).

Assumption of risk—A servant, engaged with a crew in laying a switch, held not to assume risk of injury by being struck by flying tie thrown by fellow employes merely because he knew that ties had been thrown before (121-473, 141+843). Master and Servant, ¶213.

To what servants applicable—The foreman of a switching crew held, under the evidence, guilty of negligence in failing to anticipate the presence of yard employes between cars on a switch track attempting to couple the same, rendering the railroad company liable for death of such employes, caused by the act of the foreman in causing other cars to be run against the cars about which they were working (127-381, 149+060). Master and Servant, ¶276(8).

A section hand, struck by a trespassing horse with which an engine collided, held entitled to recover, where the trainmen failed to keep a lookout, give a warning, or slacken speed (128-505, 151+177). Master and Servant, ¶286(31).

Evidence held to show negligence on the part of fellow employes in throwing a tie in such a way that it struck plaintiff. (121-473, 141+843). Master and Servant, ¶279.

An engineer in a switching yard, where men are constantly working upon the tracks, must keep a lookout for them, and use reasonable care to avoid injuring them (130-222, 153+529). Master and Servant, ¶137(4), 278(18).

An employe unloading logs from cars standing on an unloading track, detached from an engine, is not exposed to "railroad hazards," and this section does not apply. The "rule of haste" applies only where the work must be done with unusual haste by reason of its relation to the operation of the railroad, and such haste is the cause of the accident (123-249, 143+739). Master and Servant, ¶180(1).

An employe of a mining company, engaged in laying a switch and side track, whose hand was injured by the skidding of a tie thrown by fellow employes while he was taking a stone from beneath a rail, held engaged in the "hazards of a railroad," where the crew in which he was working was being urged by the foreman to hasten the work so that trains might not be delayed (121-473, 141+843). Master and Servant, ¶180.

[4427—]1. **Liability for injury or death of employe—Negligence of fellow servant, etc.—Damages for death, how distributed**—That every company, person or corporation owning or operating, as a common carrier or otherwise, a steam railroad or railway in the State of Minnesota, shall be liable in damages to any employee suffering injury while engaged in such employment; or, in case of death of such employee, to the surviving widow or husband and children of such employee; and, if none, then to such employee's parents; and, if none, then the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents or employees of such employer, or by reason of any defect or insufficiency due to the employer's negligence.

The damages recoverable in case of death to be distributed to the parties in interest in the same proportion as personal property of persons dying intestate. ('15 c. 187 § 1)

[4427—]2. **Same—Defect in appliances, etc.**—That every company, person or corporation owning or operating, as a common carrier or otherwise, a steam railroad or railway in the State of Minnesota, shall be liable in damages to any person suffering injury while he is engaged in the line of his employment, or in case of the death of such employee, to his or her surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents or employees of such employer, or by reason of any defect or insufficiency in such employer's appliances, machinery or apparatus furnished. ('15 c. 187 § 2)

[4427—]3. **Same—Contributory negligence**—That in all actions hereafter brought against any such employer under or by virtue of any of the provisions of this act, to recover damages for personal injury to the employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee; provided, that no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such employer of any statute enacted for the safety of employees contributed to the injury or death of such employee. ('15 c. 187 § 3)

[4427—]4. **Same—Assumption of risk**—That in any action brought against any employer under or by virtue of any of the provisions of this act to recover for injuries to or the death of any of its employees, such employee shall not be held to have assumed the risk of his employment in any case where the violation by the employer of any statute enacted for the safety of employees contributed to the injury or death of such employee. ('15 c. 187 § 4)

[4427—]5. **Same—Contracts, etc., exempting employer void—Payments by employer for insurance, etc.**—That any contract, rule, regulation or device whatsoever the purpose or intent of which shall be to enable any employer to exempt such employer from any liability created by this act, shall to that extent be void; provided, that in any action brought against any such employer under or by virtue of any of the provisions of this act, such employer may set off therein any sum he has contributed or paid to any insurance, relief, benefit or indemnity that may have been paid to the injured employee, or the persons entitled thereto on account of the injury or death for which said action was brought. ('15 c. 187 § 5)

[4427—]6. **Same—"Employer" to include whom**—That the term employer as used in this act shall include the receiver or receivers or other persons or corporations charged with the duty of management and operation of any business employing labor. ('15 c. 187 § 6)

[4427—]7. **Same—Survival of action**—That any right of action given by this act to a person suffering injury shall survive for the benefit of the surviving widow or husband and children of any such employee; and if none, then of such employee's parents; and if none, then of the next of kin dependent upon such employee, but in such cases there shall be only one recovery for the same injury. ('15 c. 187 § 7)

[4427—]8. **Same—Limitation of action**—That no action shall be maintained under this act unless commenced within two years from the day the cause of action accrues. ('15 c. 187 § 8)

[4432—]1. **Mileage books—Rates—Redemption of unused coupons**—Every railroad company owning, operating or using a steam railroad in this state for the intrastate transportation of passengers, shall from and after the effective date of the order provided for in sections 3 [4432—3] and 5 [4432—5] of this act keep on sale at all its ticket offices in this state mileage books for passenger transportation containing coupon tickets representing two thousand miles, good for intrastate transportation between stations on said railroad in this state, when presented for transportation by the original purchaser thereof. Such mileage books shall be sold at a price not to exceed the maximum rate per mile authorized by law to be charged by the railroad company issuing the same for the intrastate transportation of passengers between stations in this state, and the tickets contained therein shall show on their face the rate per mile paid therefor. Such mileage books shall be valid for one year from the date of purchase and if not wholly used within the year, the company issuing the same shall redeem the unused coupons therein, if presented by the purchaser for redemption within thirty days after the expiration of the year, at the rate per mile paid therefor. ('17 c. 118 § 1)

[4432—]2. **Same—Increase of rates—Unused coupons**—If any such railroad company after issuing a mileage book or books hereunder and before such mileage book or books shall be used up by the purchaser thereof, shall lawfully issue mileage books hereunder at an increased rate, the unused coupons in all unexpired mileage books theretofore issued shall thereafter be good on such railroad only for the proportionate mileage which the rate paid therefor would have purchased at such increased rate. ('17 c. 118 § 2)

[4432—]3. **Same—Powers and duties of commission—Notice and hearing—Rules and regulations**—The railroad and warehouse commission of this state within ten days after this act takes effect, shall notify every railroad company owning, operating or using a steam railroad in this state, that it will

upon a day named in such notice, which day shall not be earlier than thirty days after the giving of such notice, take up for investigation the subject of requiring all railroad companies owning, operating or using steam railroads in this state to accept for the intrastate transportation of passengers between stations on their said railroads in this state, mileage tickets issued by other railroad companies pursuant to the provisions of this act. All corporations, partnerships and persons interested in the subject may present themselves at the hearing and be heard under such reasonable rules and regulations as the said commission may prescribe. In such investigation, which shall be conducted with all due diligence, the said commission shall take into consideration the financial responsibility of the various railroad companies owning, operating or using steam railroads in this state, and the rates authorized by law to be charged by such railroad companies for the intrastate transportation of passengers between stations on their said railroads in this state, and any other pertinent matters; and after considering the same shall make findings of fact relative to the matters considered by it and an order based thereon wherein it shall establish just and reasonable rules and regulations, pursuant to which such railroad companies shall be required to accept for the intrastate transportation of passengers between stations on their said railroads in this state, mileage tickets issued by other railroad companies pursuant to this act. ('17 c. 118 § 3)

[4432—]4. Same—Certain companies excluded—If on such investigation the commission shall find that any such railroad company is financially irresponsible or that for any other just and reasonable cause other railroad companies ought not to be required to accept for transportation mileage tickets issued by such company, the said commission shall in its rules and regulations exclude from the operation of section 6 of this act [4432—6], mileage tickets issued by any such company. ('17 c. 118 § 4)

[4432—]5. Same—Order and service—Publication of rules, etc., to be issued when provisions become effective—The order shall fix the date when such rules and regulations shall become effective, which shall be not less than thirty days from the making and filing of such order, and shall be served upon the railroad companies affected thereby as provided in section 1967, Revised Laws of 1905, the same being section 4183, General Statutes of 1913. Every such railroad company shall publish and adopt such rules and regulations and shall comply therewith as soon as the same shall become effective. ('17 c. 118 § 5)

[4432—]6. Same—Mileage book interchangeable—Subject to the provisions of such rules and regulations every such railroad company shall accept for the intrastate transportation of passengers between stations in this state over all steam railroads owned, operated or used by it, mileage tickets issued by other railroad companies pursuant to the provisions of this act. ('17 c. 118 § 6)

[4432—]7. Same—Revision of rules and regulations—The railroad and warehouse commission upon such reasonable notice as it may prescribe may from time to time upon its own motion, or upon the application of any corporation, partnership or person interested therein, revise change or add to any rule or regulation fixed hereunder and any such revised, changed or added rules and regulations shall be served in the same manner and have the same force and effect as the rules and regulations originally established. ('17 c. 118 § 7)

[4432—]8. Same—Equivalent to highest class tickets—Any such mileage book when presented for transportation, either to the railroad company issuing the same or to another railroad company pursuant to the rules and regulations fixed by the commission, shall entitle the purchaser thereof to the same rights and privileges in respect to the transportation of both person and property, to which the highest class ticket issued by the railroad company to which it is presented would entitle him. ('17 c. 118 § 8)

BILLS OF LADING**PART I—THE ISSUE OF BILLS OF LADING**

[4434—]1. Bills governed by this act—Bills of lading issued by any common carrier shall be governed by this act. ('17 c. 399 § 1)

This act is entitled "An act to make uniform the law of bills of lading." The federal Bills of Lading Act, passed in August, 1916, made certain changes in the Uniform Bills of Lading Act, approved by the National Conference of Commissioners on Uniform State Laws. These and other changes in the Uniform Act are shown in italics.

[4434—]2. Form of bills—Essential terms—Every bill must embody within its written or printed terms:

- (a) The date of its issue,
- (b) The name of the person from whom the goods have been received,
- (c) The place where the goods have been received,
- (d) The place to which the goods are to be transported,
- (e) A statement whether the goods received will be delivered to a specified person, or to the order of a specified person,
- (f) A description of the goods or of the packages containing them which may, however, be in such general terms as are referred to in Section 23 [4434—23], and,
- (g) The signature of the carrier.

A negotiable bill shall have the words "order of" printed thereon immediately before the name of the person upon whose order the goods received are deliverable.

A carrier shall be liable to any person injured thereby for the damage caused by the omission from a negotiable bill of any of the provisions required in this section. ('17 c. 399 § 2)

[4434—]3. Form of bills—What terms may be inserted—A carrier may insert in a bill, issued by him, any other terms and conditions, provided that such terms and conditions shall not:

- (a) Be contrary to law or public policy, or,
- (b) In anywise impair his obligation to exercise at least that degree of care in the transportation and safekeeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own. ('17 c. 399 § 3)

[4434—]4. Definition of non-negotiable or straight bill—A bill in which it is stated that the goods are consigned or destined to a specified person, is a non-negotiable or straight bill. ('17 c. 399 § 4)

[4434—]5. Definition of negotiable or order bill—A bill in which it is stated that goods are consigned or destined to the order of any person named in such bill, is a negotiable or order bill.

Any provision in such a bill that is non-negotiable shall not affect its negotiability within the meaning of this act. ('17 c. 399 § 5)

[4434—]6. Negotiable bills must not be issued in sets—Negotiable bills issued in this state for the transportation of goods shall not be issued in parts or sets.

If so issued, the carrier issuing them shall be liable for failure to deliver the goods described therein to anyone who purchases a part for value in good faith, even though the purchase be after the delivery of the goods by the carrier to a holder of one of the other parts. ('17 c. 399 § 6)

[4434—]7. Duplicate negotiable bills must be so marked—When more than one negotiable bill is issued in this state for the same goods to be transported, the word "duplicate," or some other word or words indicating that the document is not an original bill, shall be placed plainly upon the face of every such bill, except the one first issued. A carrier shall be liable for the damage caused by his failure so to do to anyone who has purchased the bill for value in good faith as an original, even though the purchase be after the delivery of the goods by the carrier to the holder of the original bill. ('17 c. 399 § 7)

[4434—]8. **Non-negotiable bills shall be so marked**—A non-negotiable bill shall have placed plainly upon its face by the carrier issuing it "non-negotiable," or "not negotiable." This section shall not apply, however, to memoranda or acknowledgments of an informal character. ('17 c. 399 § 8)

[4434—]9. **Insertion of name of person to be notified**—The insertion in a negotiable bill of the name of a person to be notified of the arrival of the goods shall not limit the negotiability of the bill, or constitute notice to a purchaser thereof of any rights or equities of such person in the goods. ('17 c. 399 § 9)

[4434—]10. **Acceptance of bill is prima facie evidence of assent to its terms**—Except as otherwise provided in this act, where a consignor receives a bill and makes no objection to its terms or conditions at the time he receives it, *this shall be prima facie evidence that he assents to its terms in so far as they are in accordance with law and public policy.* ('17 c. 399 § 10)

PART II—OBLIGATIONS AND RIGHTS OF CARRIERS UPON THEIR BILLS OF LADING

[4434—]11. **Obligations of carrier to deliver**—A carrier, in the absence of some lawful excuse, is bound to deliver goods upon a demand made either by the consignee named in the bill for the goods, or if the bill is negotiable, by the holder thereof, if such demand is accompanied by:

- (a) An offer in good faith to satisfy the carrier's lawful lien upon the goods,
- (b) *Possession of the bill of lading* and an offer in good faith to surrender, properly indorsed, the bill which was issued for the goods, if the bill is negotiable, and,
- (c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the carrier.

In case the carrier refuses or fails to deliver the goods in compliance with a demand by the consignee or holder so accompanied, the burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal or failure. ('17 c. 399 § 11)

[4434—]12. **Justification of carrier in delivering**—A carrier is justified, subject to the provisions of the three following sections, in delivering goods to one who is:

- (a) A person lawfully entitled to the possession of the goods, or,
- (b) The consignee named in a non-negotiable bill for the goods, or,
- (c) A person in possession of a negotiable bill for the goods by the terms of which the goods are deliverable to his order, or which has been indorsed to him or in blank by the consignee or by the mediate or immediate indorsee of the consignee. ('17 c. 399 § 12)

[4434—]13. **Carrier's liability for misdelivery**—Where a carrier delivers goods to one who is not lawfully entitled to the possession of them the carrier shall be liable to anyone having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section; and, though he delivered the goods as authorized by either of said subdivisions, he shall be so liable if prior to such a delivery he:

- (a) Had been requested by or on behalf of a person having a right of property or possession in the goods, not to make such delivery, or,
- (b) Had information at the time of the delivery that it was to a person not lawfully entitled to the possession of the goods.

Such request or information to be effective within the meaning of this section must be given to an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a request or information, and must be given in time to enable the officer or agent to whom it is given, acting with reasonable diligence, to stop delivery of the goods. ('17 c. 399 § 13)

[4434—]14. **Negotiable bills must be cancelled when goods delivered**—Except as provided in section 27 [4434—27], and except when compelled by legal process, if a carrier delivers goods for which a negotiable bill had been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the bill, such carrier shall be liable for failure to deliver the goods to anyone who for value and in good faith purchases such bill, whether such purchaser acquired title to the bill before or after delivery of the goods by the carrier, and notwithstanding delivery was made to the person entitled thereto. ('17 c. 399 § 14)

[4434—]15. **Negotiable bills must be cancelled or marked when parts of goods delivered**—Except as provided in section 27 [4434—27], and except when compelled by legal process, if a carrier delivers part of the goods for which a negotiable bill had been issued and fails either:

(a) To take up and cancel the bill, or,

(b) To place plainly upon it a statement that a portion of the goods has been delivered, with a description, which may be in general terms, either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession.

He shall be liable for failure to deliver all the goods specified in the bill, to anyone who for value and in good faith purchases it, whether such purchaser acquired title to it before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto. ('17 c. 399 § 15)

[4434—]16. **Altered bills**—Any alteration, addition or erasure in a bill after its issue without authority from the carrier issuing the same either in writing or noted on the bill shall be void, whatever be the nature and purpose of the change, and the bill shall be enforceable according to its original tenor. ('17 c. 399 § 16)

[4434—]17. **Lost or destroyed bills**—Where a negotiable bill has been lost, *stolen* or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss, *theft* or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the carrier or any person injured by such delivery from any liability or loss, incurred by reason of the original bill remaining outstanding. The court may also in its discretion order the payment of the carrier's reasonable costs and counsel fees: *Provided, a voluntary indemnifying bond without order of court shall be binding on the parties thereto.*

The delivery of the goods under an order of the court, as provided in this section, shall not relieve the carrier from liability to a person to whom the negotiable bill has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods. ('17 c. 399 § 17)

[4434—]18. **Effect of duplicate bills**—A bill upon the face of which the word "duplicate" or some other word or words indicating that the document is not an original bill is placed plainly shall impose upon the carrier issuing the same the liability of one who represents and warrants that such bill is an accurate copy of an original bill properly issued, but no other liability. ('17 c. 399 § 18)

[4434—]19. **Carrier cannot set up title in himself**—No title to goods or right to their possession asserted by a carrier for his own benefit, shall excuse him from liability for refusing to deliver the goods according to the terms of a bill issued for them, unless such title or right is derived directly or indirectly from a transfer made by the consignor or consignee after the shipment, or from the carrier's lien. ('17 c. 399 § 19)

[4434—]20. **Interpleader of adverse claimants**—If more than one person claims the title or possession of goods, the carrier may require all known claimants to interplead, either as a defense to an action brought against him for non-delivery of the goods, or as an original suit, whichever is appropriate. ('17 c. 399 § 20)

[4434—]21. **Carrier has reasonable time to determine validity of claims**—If someone other than the consignee or person in possession of the bill has a claim

to the title or possession of the goods, and the carrier has information of such claim, the carrier shall be excused from liability for refusing to deliver the goods either to the consignee or person in possession of the bill, or to the adverse claimant, until the carrier has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. ('17 c. 399 § 21)

[4434—]22. **Adverse title is no defense, except as above provided**—Except as provided in the two preceding sections and in section 12 [4434—12], no right or title of a third person unless enforced by legal process shall be a defense to an action brought by the consignee of a non-negotiable bill or by the holder of a negotiable bill against the carrier for failure to deliver the goods on demand. ('17 c. 399 § 22)

[4434—]23. **Liability for non-receipt or misdescription of goods**—If a bill of lading has been issued by a carrier or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the issuing of bills of lading, the carrier shall be liable to:

(a) The owner of goods covered by a non-negotiable bill subject to existing right of stoppage in transitu, or,

(b) The holder of a negotiable bill,

Who has given value in good faith relying upon the description therein of the goods, for damages caused by the non-receipt by the carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue.

*When package freight or bulk freight is loaded by a shipper and the goods are described in a bill merely by a statement of marks or labels upon them or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill that packages are said to contain goods of a certain kind or quantity or in a certain condition, or that the contents or condition of the contents of packages are unknown, or words of like purport are contained in the bill, such statements, if true, shall not make liable the carrier issuing the bill, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. The carrier may, also, by inserting in the bill the words "shipper's weight, load and count" or other words of like purport indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by the improper loading or by the non-receipt or by the misdescription of the goods described in the bill: *Provided, however, where the shipper of bulk freight installs and maintains adequate facilities for weighing such freight, and the same are available to the carrier, then the carrier upon written request of such shipper and when given a reasonable opportunity so to do, shall ascertain the kind and quantity of bulk freight within a reasonable time after such written request, and the carriers shall not in such cases insert in the bill of lading the words "shipper's weight," or other words of like purport, and if so inserted contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein.**

('17 c. 399 § 23)

[4434—]23A. **Certain duties of carrier when goods are loaded by him**—*When goods are loaded by a carrier such carrier shall count the packages of goods, if package freight, and ascertain the kind and quantity if bulk freight, and such carrier shall not, in such cases, insert in the bill of lading or in any notice, receipt, contract, rule, regulation or tariff, "shipper's weight, load and count," or other words of like purport, indicating that the goods were loaded by the shipper and the description of them made by him or in case of bulk freight and freight not concealed by packages the description made by him. If so inserted, contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein.* ('17 c. 399 § 23A)

[4434—]24. **Attachment or levy upon goods for which a negotiable bill has been issued**—If goods are delivered to a carrier by the owner or by a person whose act in conveying the title to them to a purchaser for value in good

faith would bind the owner and a negotiable bill is issued for them, they cannot thereafter, while in the possession of the carrier, be attached by garnishment or otherwise, or be levied upon under an execution, unless the bill be first surrendered to the carrier or its negotiation enjoined. The carrier shall in no such case be compelled to deliver the actual possession of the goods until the bill is surrendered to him or impounded by the court. ('17 c. 399 § 24)

[4434—]25. **Creditor's remedies to reach negotiable bills**—A creditor whose debtor is the owner of a negotiable bill shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such bill, or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process. ('17 c. 399 § 25)

[4434—]26. **Negotiable bill must state charges for which lien is claimed**—If a negotiable bill is issued the carrier shall have no lien on the goods therein mentioned, except for charges on those goods for freight, storage, demurrage and terminal charges, and expenses necessary for the preservation of the goods or incident to their transportation subsequent to the date of the bill, unless the bill expressly enumerates other charges for which a lien is claimed. In such case there shall also be a lien for the charges enumerated so far as they are allowed by law and the contract between the consignor and the carrier. ('17 c. 399 § 26)

[4434—]27. **Effect of sale**—After goods have been lawfully sold to satisfy a carrier's lien, or because they have not been claimed, or because they are perishable or hazardous, the carrier shall not thereafter be liable for failure to deliver the goods *themselves* to the consignee or owner of the goods, or to a holder of the bill given for the goods when they were shipped, even if such bill be negotiable. ('17 c. 399 § 27)

PART III—NEGOTIATION AND TRANSFER OF BILLS

[4434—]28. **Negotiation of negotiable bills by delivery**—A negotiable bill may be negotiated by delivery where, by the terms of the bill, the carrier undertakes to deliver the goods to the order of a specified person and such person or a subsequent indorsee of the bill has indorsed it in blank. ('17 c. 399 § 28)

[4434—]29. **Negotiation of negotiable bills by indorsement**—A negotiable bill may be negotiated by the indorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such indorsement may be in blank or to a specified person. If indorsed to a specified person, it may be negotiated again by the indorsement of such person in blank or to another specified person. Subsequent negotiation may be made in like manner. ('17 c. 399 § 29)

[4434—]30. **Transfer of bills**—A bill may be transferred by the holder by delivery, accompanied with an agreement, express or implied, to transfer the title to the bill or to the goods represented thereby.

A non-negotiable bill cannot be negotiated *free from existing equities* and the indorsement of such a bill gives the transferee no additional right. ('17 c. 399 § 30)

[4434—]31. **Who may negotiate a bill**—A negotiable bill may be negotiated by any person in possession of the same, however such possession may have been acquired if, by the terms of the bill, the carrier undertakes to deliver the goods to the order of such person, or if at the time of negotiation the bill is in such form that it may be negotiated by delivery. ('17 c. 399 § 31)

[4434—]32. **Rights of person to whom a bill has been negotiated**—A person to whom a negotiable bill has been duly negotiated acquires thereby:

(a) Such title to the goods as the person negotiating the bill to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value, and,

(b) The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully as if the carrier had contracted directly with him. ('17 c. 399 § 32)

[4434—]33. Rights of person to whom a bill has been transferred—A person to whom a bill has been transferred but not negotiated acquires thereby as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor. If the bill is non-negotiable, such person also acquires the right to notify the carrier of the transfer to him of such bill, and thereby to become the direct obligee of whatever obligations the carrier owed to the transferor of the bill immediately before the notification.

Prior to the notification of the carrier by the transferor or transferee of a non-negotiable bill, the title of the transferee to the goods and the right to acquire the obligation of the carrier may be defeated by garnishment or by attachment or execution upon the goods by a creditor of the transferor, or by a notification to the carrier by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

A carrier has not received notification within the meaning of this section unless an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a notification, has been notified; and no notification shall be effective until the officer or agent to whom it is given has had time with the exercise of reasonable diligence to communicate with the agent or agents having actual possession or control of the goods. ('17 c. 399 § 33)

[4434—]34. Transfer of negotiable bill without indorsement—Where a negotiable bill is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the bill, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced. ('17 c. 399 § 34)

[4434—]35. Warranties on sale of bill—A person who negotiates or transfers for value a bill by indorsement or delivery, including one who assigns for value a claim secured by a bill, unless a contrary intention appears, warrants:

- (a) That the bill is genuine,
- (b) That he has a legal right to transfer it,
- (c) That he has knowledge of no fact which would impair the validity or worth of the bill, and,
- (d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a bill the goods represented thereby.

In case of an assignment of a claim secured by a bill, the liability of the assignor shall not exceed the amount of the claim. ('17 c. 399 § 35)

[4434—]36. Indorser not a guarantor—The indorsement of a bill shall not make the indorser liable for any failure on the part of the carrier or previous indorsers of the bill to fulfill their respective obligations. ('17 c. 399 § 36)

[4434—]37. No warranty implied from accepting payment of a debt—A mortgagee or pledgee, or other holder of a bill for security who in good faith demands or receives payment of the debt for which such bill is security, whether from a party to a draft drawn for such debt or from any other person, shall not be deemed by so doing to represent or to warrant the genuineness of such bill or the quantity or quality of the goods therein described. ('17 c. 399 § 37)

[4434—]38. When negotiation not impaired by fraud, accident, mistake, duress or conversion—The validity of the negotiation of a bill is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was deprived of the possession of the same by fraud, accident, mistake, duress, loss, theft or conversion, if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated, gave value therefor

in good faith, without notice of the breach of duty, or fraud, accident, mistake, duress, *loss*, *theft* or conversion. ('17 c. 399 § 38)

[4434—]39. Subsequent negotiation—Where a person having sold, mortgaged, or pledged goods which are in a carrier's possession and for which a negotiable bill has been issued, or having sold, mortgaged or pledged the negotiable bill representing such goods, continues in possession of the negotiable bill, the subsequent negotiation thereof by that person under any sale, pledge or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, shall have the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation. ('17 c. 399 § 39)

[4434—]40. Form of the bill as indicating rights of buyer and seller—Where goods are shipped by the consignor in accordance with a contract or order for their purchase, the form in which the bill is taken by the consignor shall indicate the transfer or retention of the property or right to the possession of the goods as follows:

(a) Where by the bill the goods are deliverable to the buyer or to his agent, or to the order of the buyer or of his agent, the consignor thereby transfers the property in the goods to the buyer.

(b) Where by the bill the goods are deliverable to the seller or to his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

(c) Where by the bill the goods are deliverable to the order of the buyer or of his agent, but possession of the bill is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods, as against the buyer.

(d) Where the seller draws on the buyer for the price and transmits the draft and bill together to the buyer to secure acceptance or payment of the draft, the buyer is bound to return the bill if he does not honor the draft, and if he wrongfully retains the bill he acquires no added right thereby. If, however, the bill provides that the goods are deliverable to the buyer or to the order of the buyer, or is indorsed in blank or to the buyer by the consignee named therein, one who purchases in good faith for value, the bill or goods from the buyer, shall obtain the title to the goods, although the draft has not been honored, if such purchaser has received delivery of the bill indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful. ('17 c. 399 § 40)

[4434—]41. Demand, presentation or sight draft must be paid, but draft on more than three days' time merely accepted before buyer is entitled to the accompanying bill—Where the seller of goods draws on the buyer for the price of the goods and transmits the draft and a bill of lading for the goods either directly to the buyer or through a bank or other agency unless a different intention on the part of the seller appears, the buyer and all other parties interested shall be justified in assuming:

(a) If the draft is by its terms or legal effect payable on demand or presentation or at sight, or not more than three days thereafter (whether such three days be termed days of grace or not), that the seller intended to require payment of the draft before the buyer should be entitled to receive or retain the bill.

(b) If the draft is by its terms payable on time extending beyond three days after demand, presentation or sight (whether such three days be termed days of grace or not), that the seller intended to require acceptance, but not payment of the draft before the buyer should be entitled to receive or retain the bill.

The provisions of this section are applicable whether by the terms of the bill the goods are consigned to the seller, or to his order, or to the buyer, or to his order, or to a third person, or to his order. ('17 c. 399 § 41)

[4434—]42. **Negotiation defeats vendor's lien**—Where a negotiable bill has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such bill has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier who issued such bill of the seller's claim to a lien or right of stoppage in transitu. Nor shall the carrier be obliged to deliver or justified in delivering the goods to an unpaid seller unless such bill is first surrendered for cancellation. ('17 c. 399 § 42)

[4434—]43. **When rights and remedies under mortgages and liens are not limited**—Except as provided in Section 42 [4434—42], nothing in this act shall limit the rights and remedies of a mortgagee or lienholder whose mortgage or lien on goods would be valid, apart from this act, as against one who for value and in good faith purchased from the owner, immediately prior to the time of their delivery to the carrier, the goods which are subject to the mortgage or lien and obtained possession of them. ('17 c. 399 § 43)

PART IV—CRIMINAL OFFENCES

[4434—]44. **Issue of bill for goods not received**—Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a bill knowing that all or any part of the goods for which such bill is issued have not been received by such carrier, or by any agent of such carrier, or by a connecting carrier, or are not under the carrier's control at the time of issuing such bill, shall be guilty of a crime, and upon conviction shall be punished for each offence by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. ('17 c. 399 § 44)

[4434—]45. **Issue of bill containing false statement**—Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a bill for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offence by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. ('17 c. 399 § 45)

[4434—]46. **Issues of duplicate bills not so marked**—Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a duplicate or additional negotiable bill for goods in violation of the provisions of section 7 [4434—7], knowing that a former negotiable bill for the same goods or any part of them is outstanding and uncanceled, shall be guilty of a crime, and upon conviction shall be punished for each offence by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. ('17 c. 399 § 46)

[4434—]47. **Negotiation of bill for mortgaged goods**—Any person who ships goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable bill which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall be guilty of a crime, and upon conviction shall be punished for each offence by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. ('17 c. 399 § 47)

[4434—]48. **Negotiation of bill when goods are not in carrier's possession**—Any person who with intent to deceive negotiates or transfers for value a bill knowing that any or all of the goods which by the terms of such bill appear to have been received for transportation by the carrier which issued the bill, are not in the possession or control of such carrier, or of a connecting carrier, without disclosing this fact, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. ('17 c. 399 § 48)

[4434—]49. **Inducing carrier to issue bill when goods have not been received**—Any person who with intent to defraud secures the issue by a carrier of a bill knowing that at the time of such issue, any or all of the goods

described in such bill as received for transportation have not been received by such carrier, or an agent of such carrier or a connecting carrier, or are not under the carrier's control, by inducing an officer, agent, or servant of such carrier falsely to believe that such goods have been received by such carrier, or under its control, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. ('17 c. 399 § 49)

[4434—]50. **Issue of non-negotiable bill not so marked**—Any person who with intent to defraud issues or aids in issuing a non-negotiable bill without the words "not negotiable" placed plainly upon the face thereof, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years or by a fine not exceeding five thousand dollars, or by both. ('17 c. 399 § 50)

PART V—INTERPRETATION

[4434—]51. **Rule for cases not provided for in this act**—In any case not provided for in this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress or coercion, accident, mistake, bankruptcy or other invalidating cause, shall govern. ('17 c. 399 § 51)

[4434—]52. **Interpretation shall give effect to purpose of uniformity**—This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it, *and also of the United States*. ('17 c. 399 § 52)

[4434—]53. **Definitions**—(1) In this act, unless the context or subject matter otherwise requires:

"Action" includes counter claim, set-off, and suit in equity.

"Bill" means bill of lading.

"Consignee" means the person named in the bill as the person to whom delivery of the goods is to be made.

"Consignor" means the person named in the bill as the person from whom the goods have been received for shipment.

"Goods" means merchandise or chattels in course of transportation, or which have been or are about to be transported.

"Holder" of a bill means a person who has both actual possession of such bill and a right of property therein.

"Order" means an order by indorsement on the bill.

"Owner" does not include mortgagee or pledgee.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee and to take as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation whether for money or not, constitutes value where a bill is taken either in satisfaction thereof or as security therefor.

(2) A thing is done "in good faith" within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not. ('17 c. 399 § 53)

[4434—]54. **Act does not apply to existing bills**—The provisions of this act do not apply to bills made and delivered prior to the taking effect thereof. ('17 c. 399 § 54)

[4434—]55. **Inconsistent legislation repealed**—Section 4495 of General Statutes, 1913, and chapter 414 of the Session Laws of 1909, the same being sections 4322 to 4329, inclusive, of General Statutes, 1913, are hereby repealed, and all acts or parts of acts inconsistent with this act are hereby repealed. ('17 c. 399 § 55)

[4434—]56. **Time when the act takes effect**—This act shall take effect and be in force from and after the 1st day of June, 1917. ('17 c. 399 § 56)

[4434—]57. **Name of act**—This act may be cited as the uniform bills of lading act. ('17 c. 399 § 57)

STORAGE AND SHIPMENT OF GRAIN

TERMINAL WAREHOUSES

4435. **Defined**—All elevators or warehouses located within the switching limits of St. Paul, Minneapolis and Duluth, and other points in the state which are now, or may hereafter be designated as terminal points in which grain is received for storage in bulk, and that of different owners mixed together or so stored that the identity of the different lots or parcels is not preserved, shall be public warehouses known as "terminal warehouses," provided that the storage space in any elevator or warehouse built by any state may be used exclusively by the citizens of such state, unless the state so building and owning the same shall otherwise provide. (Amended '15 c. 349 § 1)

4452. **Minnesota grades**—The two boards or a majority of the six members thereof shall meet annually in joint session on or before September 15, and establish the grades of all grain subject to state inspection to be known as the "Minnesota Grades." Such grades as are thereby established and tests thereof shall be published daily for one week in a newspaper in each of the cities of Minneapolis and Duluth and all grain received at any public warehouse shall be graded accordingly. Such grades shall not be changed before the next annual meeting without the concurrence of at least five members of such boards. In establishing the grades, in addition to the physical qualities of the grain, there shall be taken into consideration the milling and bread producing quality of all grain products used as human food. Each of said boards shall determine the grade and dockage, if any, of all grain in all cases where appeals from the decisions of the chief inspector have been taken and for such purpose they may request fresh samples of such grain to be furnished direct to the board having the case under consideration. Dockage shall be considered as being of two classes: first; that having value and, second, that having no value. The former to be considered and allowed for as such, and any foreign content of the grain shall not be considered in establishing the grade. They shall also render assistance and advice to the chief inspector of grain so as to enable him to instruct the deputy inspectors of grain under his jurisdiction in accordance with the decisions and work of the board. (Amended '17 c. 284 § 1)

4458. **Duty of inspectors**—Such inspector shall inspect and grade all grain received at or shipped from any terminal warehouse in car-load lots or boat-load lots, and give a certificate of the inspection to the persons entitled thereto. Their decision shall be conclusive as to the grade and dockage of such grain, and the certificate shall be evidence thereof, unless changed upon re-inspection and appeal. Every certificate of inspection so issued shall in addition to other facts, set forth the test weight per bushel of the grain so inspected. (Amended '17 c. 280 § 1)

4463. Weighmaster's records and certificates—

In view of § 4497, this section does not limit the record to be kept to a record of the certificates issued, and hence the weighers may be required by the state railroad and warehouse commission to make notation in their records of the bad condition of cars inspected by them. Such records are competent evidence of the facts so noted, under the general rule that, where a statute requires a record to be kept by a public officer, the record so kept is competent evidence of the facts recited therein. The statute makes the certificates *prima facie* evidence, without other authentication than the signature of the weigher; but this provision applies only to the certificate, and not to other papers which are merely transcripts from the records (127-299, 149+471). Evidence, ~~§~~ 333(1).

MISCELLANEOUS PROVISIONS

4495. [Repealed.]

See § [4434—]55.

4497. General supervision by commission—Rules—

127-299, 149+471; note under § 4463.

4498. Shipper to affix tags—

This section has reference to shipments within the state, and does not apply to interstate transactions (131-152, 154+954). Commerce, ~~6~~61(1).

[4505—]1. Unlawful discrimination between localities in sale, or purchase of grain prohibited—Penalty—Any person, firm, copartnership or corporation engaged in the business of buying grain, either for himself or others, who shall with the intention of creating a monopoly or destroying the business of a competitor, discriminate between different sections, localities, communities or cities of this state, by purchasing such grain at a higher price or rate in one locality than is paid for grain of same grade and condition by said purchaser in another locality after making due allowance for the difference, if any, in actual cost of transportation from the locality of purchase, to the locality of manufacture, use, or distribution, shall be deemed guilty of unfair discrimination and upon conviction thereof shall be punished by a fine not exceeding \$500.00, or by imprisonment in the county jail not to exceed six months. ('17 c. 377 § 1)

[4505—]2. Same—Commission to enforce—The state railroad and warehouse commission shall enforce the provisions of this act, and in so doing shall have and exercise all the powers heretofore conferred upon them by law. ('17 c. 377 § 2)

PART II. OBLIGATIONS AND RIGHTS OF WAREHOUSEMEN UPON THEIR RECEIPTS

4534. Liability for care of goods—

Liability of carrier as warehouseman determined (122-453, 142+727). Carriers, ~~6~~138-145.

Where loss of goods is shown, the burden of proving absence of negligence is on the warehouseman. Freedom from negligence must be shown by a preponderance of the evidence (122-453, 142+727). Warehousemen, ~~6~~34(5).

[WAREHOUSEMEN OTHER THAN GRAIN AND COLD STORAGE IN CITIES OF FIRST CLASS]

[4575—]1. Powers and duties of commission—That the Railroad and Warehouse Commission shall have general supervision of all warehousemen doing business in cities of the first class in this state, as warehousemen are defined in this Act, and shall keep itself informed as to the manner and method in which their business is conducted. It shall examine such business and keep itself informed as to its general condition, capitalization, rates and other charges, its rules and regulations, and the manner in which the plants, equipments, and other property, owned, leased, controlled or operated, are constructed, managed, conducted and operated, not only with reference to the adequacy, security and accommodation afforded to the public by their service, but also in respect to the compliance with the provisions of this Act or with the orders of the commission. ('15 c. 210 § 1)

By § 39 this act shall take effect October 1, 1915.

[4575—]2. Terms defined—(a) The word "Commission" when used in this act, shall mean the Minnesota State Railroad and Warehouse Commission.

(b) The term "Commissioner" when used in this Act, means one of the members of the commission.

(c) The term "Warehouseman" when used in this Act, means and includes every corporation, company, association, joint stock company or as-

sociation, firm, partnership or individual, their trustees, assignees or receivers appointed by any court whatsoever, controlling, operating or managing in any city of the first class in this state, directly or indirectly, any building or structure or any part thereof, or any buildings or structures, or any other property whatsoever and using the same for the storage or warehousing of goods, wares, or merchandise for hire, but shall not include persons, corporations or other parties operating grain or cold-storage warehouses.

(d) The term "Corporation" when used in this Act, includes any corporation, company, association, joint stock company or association.

(e) The term "Person" when used in this Act, includes any individual, firm or copartnership.

(f) The term "Service" when used in this Act, is used in its broadest sense and includes not only the use and occupancy of space for storage purposes, but also any labor expended and the use of any equipment, apparatus and appliances or of any drayage or other facilities, employed, furnished or used in connection with the storage of goods, wares and merchandise, subject to the provisions of this act.

(g) The term "Rate" when used in this Act, includes every individual or joint rate, charge or other compensation of any warehouseman, either for storage or for any other service furnished in connection therewith, or any two or more such individual or joint rates, charges, or other compensations of any warehouseman, or any schedule or tariff thereof, and any rule, regulation, charge, practice or contract relating thereto. ('15 c. 210 § 2)

[4575—]3. Duties of warehousemen—Every warehouseman shall furnish all information required by the commission to carry into effect the provisions of this act and make specific answers to all questions submitted by the commission, under oath; and if such warehouseman is a corporation then it shall answer under oath of one of its duly authorized officers.

Every warehouseman shall obey and comply with each and every requirement of every order, decision, direction, rule or regulation, made or prescribed by the commission, in the matters specified in this act, and shall do everything necessary or proper to secure the compliance with and the observance of the same, by all its officers, agents and employees.

Nothing in this act shall be construed as limiting the rights of any warehouseman to lease or let for any storage purpose any floor of his building or any portion thereof, provided, however, that any warehouseman who so leases any portion or portions of his warehouse shall first file with the commission a schedule showing his rates for such spaces and the monthly rental per square foot or per cubic foot. ('15 c. 210 § 3)

[4575—]4. Powers of commission—Inspection of books, property, etc.—Oaths—Record of testimony—The commission, each commissioner and each officer and person employed by the commission, has the right, at any and at all times, to inspect the papers, books, accounts and documents, plant, equipments or other property, of any warehouseman; and the commission, each commissioner and any officer of the commission authorized to administer oath, shall have the power to examine under oath, any officer, agent or employee of such warehouseman, in relation to any matter within the jurisdiction of the commission, provided that any person other than a commissioner demanding such inspection shall produce, under the seal of the commission, his authority to make such inspection, and, provided further that a written record of the testimony or statement so given under oath, shall be made and filed with the commission. Information so obtained shall be not admitted in evidence or used in any proceedings except in proceedings provided for in this act. ('15 c. 210 § 4)

[4575—]5. Duties of the commission—It is hereby made a duty of the Railroad and Warehouse Commission, to see that the provisions of the constitution and the statutes of this state affecting warehousemen, the enforcement of which is not specifically vested in some other officer or tribunal, are enforced.

ed and obeyed, and that violations thereof are promptly prosecuted, and penalties due the state therefor recovered and collected, and to this end it may sue in the name of the state. ('15 c. 210 § 5)

[4575—]6. Accounts of warehousemen—Powers of Commission—Apportionment of capitalization, etc.—The commission shall have the power to compel every warehouseman to keep and maintain accurate, complete and comprehensive accounts, including records of service furnished and commissions paid, as well as accounts of earnings and expenses, and it may examine and audit such accounts from time to time. Such accounts shall provide for forms showing all sources of income, the amounts due and received from each source, and the amounts expended and for each purpose, distinguishing clearly all payments for operating expenses from those for new construction, extensions, additions, repairs or replacements, and for balance sheets showing assets and liabilities.

The commission may require every warehouseman engaged directly or indirectly, in any business other than the warehouse business, as defined by this law, to keep separately, in like manner and form, the accounts of all such other business, and the commission may provide for the examination and inspection of the books, accounts, papers and records of such other business, in so far as may be necessary to enforce any provisions of this act. The commission shall have the power to inquire as to, and prescribe the apportionment of capitalization, earnings, debts and expenses, fairly and justly to be awarded or borne by, the ownership, operation, management or control of such warehouse as distinguished from such other business. ('15 c. 210 § 6)

[4575—]7. Appreciation and depreciation accounts, etc.—The commission shall have the power, after a hearing, to require all warehousemen to keep such accounts as will adequately reflect appreciation, depreciation, or obsolescence. The commission may from time to time ascertain and determine, and by order fix, the proper and adequate rate of appreciation or depreciation of the property of each warehouseman, and each warehouseman shall conform his appreciation and depreciation accounts to the rate so ascertained, determined and fixed. ('15 c. 210 § 7)

[4575—]8. Office—Accounts, where kept, etc.—Each warehouseman shall have and maintain an office in the city in which it has its principal place of business, and shall keep in said office, all such books, accounts, papers, records and memoranda as shall be ordered by the commission to be kept within the state. The address of such office shall be filed with the commission. No books, accounts, papers, records or memoranda ordered to be kept within the state, shall be at any time removed from the state, except on such conditions as may be prescribed by the commission. ('15 c. 210 § 8)

[4575—]9. Falsification or destruction of accounts, etc.—Penalty—Any person who shall willfully make any false entry in the account or in any record or memorandum kept by a warehouseman, or who shall willfully destroy, mutilate, alter or by any other means or device, falsify a record of any such account, record or memorandum, or who shall willfully neglect or fail to make full, true and correct entries in such accounts, records or memoranda, of all facts and transactions appertaining to the business of the warehouseman, or shall keep any accounts or records with the intent to evade the provisions of this act, shall be guilty of a misdemeanor and upon conviction shall be subject to imprisonment not exceeding one year, or to a fine not exceeding \$1,000 or both. ('15 c. 210 § 9)

[4575—]10. Divulging information—Penalty—Any officer or employee of the commission, who divulges to any person other than a member of the commission, any fact or information coming to his knowledge during the course of an inspection, examination or investigation of any accounts, records, memoranda, books or papers of a warehouseman, except in so far as he may be authorized by the commission, or by a court of competent jurisdiction, or a judge thereof, shall be guilty of a misdemeanor, and upon conviction

tion shall be subject to imprisonment not exceeding one year or to a fine not exceeding \$1,000 or to both. ('15 c. 210 § 10)

[4575—]11. Uniform receipts—Every warehouseman receiving goods in store shall issue for all such a receipt embodying the terms of such receipts as authorized by the Uniform Warehouse Receipts Act of the State of Minnesota. ('15 c. 210 § 11)

[4575—]12. Just and reasonable rates—All rates made, demanded or received by any warehouseman for any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable rate demanded or received for such service is hereby prohibited and declared unlawful.

Every warehouseman licensed under this act shall receive, store and forward all property offered for storage by any person, persons, or corporation, impartially and at as low a rate of charge, and in a manner and on terms, and in quantities as favorable to the party offering such property as he at the same place receives, stores and forwards in the ordinary course of business, property of like description and in similar quantities offered by any other person, persons or corporations. ('15 c. 210 § 12)

[4575—]13. Schedule of rates—Form—Filing and publishing—Every warehouseman shall file with the commission and shall print and keep open for public inspection a schedule of rates. The commission may determine and prescribe the form in which the schedules required by this act to be filed with the commission and to be kept open for public inspection, shall be prepared and arranged, and may change the form from time to time if it shall be found expedient; and no warehouseman shall undertake to perform any service, or store any goods, wares or merchandise, unless or until such schedule of rates has been filed and published in accordance with the provisions of this act; provided that in case of emergency, a service or storage not specifically covered by the schedules filed, may be performed or furnished at a reasonable rate, which rate shall forthwith be filed and shall be subject to review in accordance with the provisions of this act. ('15 c. 210 § 13)

[4575—]14. Change of rates—Unless the commission otherwise orders, no change shall be made by any warehouseman, in any rate except after thirty days' notice to the commission and to the public as herein provided. Such notice shall be given by filing with the commission and keeping open for public inspection, new schedules or supplements stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The commission for good cause shown, may, after hearing, allow changes without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published. ('15 c. 210 § 14)

[4575—]15. Charging more or less than the published rate, etc.—Except as specified in Sections 13 [4575—13] and 14 [4575—14], no warehouseman shall have, demand, collect, or receive, a greater or less or different compensation for any service rendered or for storing any goods, or wares or merchandise, than the rate or rates applicable to such service or storage, as specified in the schedules on file and in effect at the time.

Provided, nevertheless, that when a warehouseman shall have had goods in store for such a period that the storage charges thereon accumulated are more than such goods would bring at a forced sale, the commission, upon written application and proof thereof, may authorize such warehouseman to compromise such charges for a sum not less than the amount which such goods would bring at such forced sale. ('15 c. 210 § 15)

[4575—]16. Discrimination in rates, etc.—Penalty—Except as herein otherwise specified, no warehouseman, or any officer, agent or employé thereof, shall directly or indirectly by remittance, rebate, or any device, inducement or other means whatsoever, suffer or permit any corporation or person to obtain any service, or the storage of any goods, wares or merchandise, at less than the rate or rates then established and in force as shown by the

schedule filed and in effect at the time. No person or corporation shall directly or indirectly by any device, inducement or means whatsoever, either with or without the consent or connivance of a warehouseman or any of the officers, agents or employees thereof, obtain or seek to obtain, any service, or the storage of any goods, wares or merchandise, at less than the rate or rates then established and in force therefor. Any warehouseman or the officers, agents or employees thereof, or any person acting for or employed by it, or transacting business with it, or any other person who shall violate any provision of this section, shall be guilty of a misdemeanor and upon conviction shall be subject to imprisonment not exceeding one year, or to a fine not exceeding \$1,000 or both. ('15 c. 210 § 16)

[4575—]17. Commission to fix rates and regulations, when—Whenever the commission, after a hearing upon its own motion, or upon complaint, shall find that the rate or rates demanded, observed, charged or collected by any warehouseman, for any service or storage of goods, wares, merchandise, or in connection with such service or storage, are unjust, unreasonable, discriminatory, preferential, or in any wise in violation of any provision of law, the commission shall determine the just and reasonable rate or rates to be thereafter effective and in force, in such warehouse, and shall fix the same by an order, which shall also determine when such rate or rates shall go into effect. Before making any order under the provisions of this section, the warehouseman shall have an opportunity to be heard upon reasonable notice to be determined by the commission. ('15 c. 210 § 17)

[4575—]18. License — Application — Notice — Fees — Renewal — Revocation, etc.—Every warehouseman shall be licensed annually by and shall be under the supervision and subject to the inspection of the commission. Written application, under oath in such form as shall be prescribed by the commission, shall be made to the commission for license, specifying the city in which it is proposed to carry on the business of warehousing, the location, size, character and equipment of the building or buildings or premises to be used by the said warehouseman, the kind of goods, wares and merchandise intended to be stored therein, the name of the person or corporation operating the same, and of each member of the firm or officer of the corporation, and any other facts necessary to satisfy the commission that the property proposed to be used is suitable for warehouse purposes, and that the warehouseman making the application is qualified to carry on the business of warehousing. Should the commission decide that the building or other property proposed to be used as a warehouse is suitable for the proposed purpose, and that the applicant or applicants are entitled to a license, notice of such decision shall be given the interested parties, and upon the applicant or applicants filing with the commission the necessary bond, as provided for in this act, the commission shall issue the license provided for, upon payment of the license fee, as in this section provided. A warehouseman to whom a license is issued shall pay for such license a fee of one hundred dollars (\$100.-00). Such license may be renewed from year to year, but shall never be valid for a period of more than one year, and always upon payment of the full license fee, as provided for in this section for such renewal; provided that no license shall be issued for any portion of a year for less than the full amount of the license fee, as provided for in this section. Each license obtained under this act shall be publicly displayed in the main office of the place of business of the warehouseman to whom it is issued. Such license shall authorize the warehouseman to carry on the business of warehousing only in the one city named in said application, and in the buildings therein described. But the commission without requiring an additional bond and license, may issue permits from time to time to any warehouseman already duly licensed under the provisions of this act, to operate an additional warehouse or warehouses in the same city for which his original license was issued during the term thereof, upon his filing an application for such permit, and in such form as shall be prescribed by the commission.

Licenses and permits may be revoked by the commission for violation of

law, or of any rule or regulation by it prescribed, upon notice and hearing. A license may be refused to any warehouseman whose license has been revoked during the preceding year. ('15 c. 210 § 18)

[4575—]19. **Bond**—Every warehouseman applying for and receiving a license from the commission as provided for in this act, shall file with the commission, and acceptable to the commission, a surety bond to the State of Minnesota. Such bonds shall be in the amount of \$50,000.00 and be conditioned for the faithful discharge of all duties as a warehouseman operating under this act, and full compliance with the laws of the state and rules, regulations and orders of the commission relative thereto. ('15 c. 210 § 19)

[4575—]20. **Transacting business without license—Penalty**—Any person or persons who shall transact the business of a warehouseman as defined in this act, except for the purpose of winding up the same under the supervision of the commission, without first procuring a license and giving a bond as provided for in this act, and any licensed warehouseman who shall operate any warehouse without obtaining the permit herein provided for, or who shall continue to transact such business after such license has expired, or such bond may have become void or found insufficient security for the penal sum in which it is executed, by the commission approving the same, shall be guilty of a misdemeanor, and upon conviction be fined in a sum not less than \$100 nor more than \$500 for each and every day such business is carried on before said license or permit, as the case may be, is issued or after the expiration of such license or permit, or after receiving notice from the commission that such bond has become void or has been found insufficient security; and the operation of such warehouseman may be enjoined upon complaint of the commission before a court of competent jurisdiction. ('15 c. 210 § 20)

[4575—]21. **Proceedings against warehouseman before commission, how commenced**—Proceedings before the commission against any warehouseman, shall be instituted by complaint, verified as pleadings in a civil action, stating in ordinary language the facts constituting the alleged omission or offenses. The parties to such proceedings shall be termed, respectively, "Complainant" and "Respondent." ('15 c. 210 § 21)

[4575—]22. **Order—Service on respondent**—Upon filing such complaint, if there appear reasonable grounds for investigating such matter, the commission shall issue an order, directed to such warehouseman, requiring him to grant the relief demanded, or show cause by answer within 20 days from the service of such notice, why such relief should not be granted. Such order, together with a copy of the complaint shall forthwith be served upon the respondent. ('15 c. 210 § 22)

[4575—]23. **Answer**—The respondent may file and serve by mail, upon the complainant within 20 days after the service of the order, an answer alleging that it has already granted the relief demanded, or setting up any matter of defense. If the answer alleges the granting of the relief, the complainant shall within 20 days reply, admitting or denying such allegation. If he fails to reply, or admits the allegation, the proceeding shall be dismissed. ('15 c. 210 § 23)

[4575—]24. **Hearing—Findings and order**—If the matter be not adjusted to the satisfaction of the commission, it shall set a time and place of hearing, and give at least ten days notice thereof to each party. The parties shall appear either in person or by attorney. The commission shall hear evidence and otherwise investigate the matter and shall make findings of fact upon all matters involved, and such order or recommendation in the premises as may be just. A copy of such findings and order or recommendation, shall forthwith be served upon each party. No proceeding shall be dismissed on account of want of pecuniary interest in the complainant. ('15 c. 210 § 24)

[4575—]25. **Notices and orders—Service**—All notices and orders in proceedings before the commission shall be signed by the secretary. Service may be made of all notices, orders or other papers provided for in this act, by mail,

upon any person or firm, or upon the president, general manager or other proper executive officer of any corporation interested. If any party has appeared by attorney such service shall be made upon such attorney. ('15 c. 210 § 25)

[4575—]26. **Witnesses**—The commission in any hearing or investigation, may require the attendance of any witnesses and the production of any books, papers or records. Witnesses shall receive the same fees and mileage as in civil actions. The disobedience of any subpoena in such proceedings, or contumacy of any witness, may upon application of the commission, be punished by any district court in the same manner as if the proceedings were pending in such court. ('15 c. 210 § 26)

[4575—]27. **Complaint that rates are unreasonable, etc.—Hearing—Substituted rates, etc.**—Upon verified complaint of any person or of any corporation that any rates are unjust, unreasonable, discriminatory, preferential or in any way in violation of law, the commission shall proceed to investigate the matters alleged in such complaint, and for the purposes of such investigation they may require the attendance of witnesses and the production of books, papers and documents. If, upon the hearing, such rates are found to be unjust, unreasonable, discriminatory, preferential or in any way in violation of law the commissioner shall make an order, stating wherein the same are so unjust, unreasonable, discriminatory, preferential or in any way in violation of law, and shall make a rate or rates which shall be substituted for that or those so complained of. Rates so made by the commission shall be deemed prima facie reasonable in all courts, and shall be in full force during the pendency of any appeal or other proceedings to review the action of the commission in establishing the same. ('15 c. 210 § 27)

[4575—]28. **Investigation without complaint—Notice—New schedules**—The commission shall also upon its own motion, investigate any matter relating to the management by any warehouseman of his business, or the reasonableness of all rates whenever in its judgment the public interest so requires. If any such rates are found unreasonable or discriminatory, the commission shall find what is reasonable under the circumstances, and may make new schedules of any or all rates under consideration in such investigation, and its own order shall fix the date when such rates shall go into effect. Before making any order under the provisions of this section, the warehouseman shall have an opportunity to be heard upon such notice as the commission shall deem reasonable. The rates established under the proceedings instituted under this section, shall be in force during the pendency of any appeal or other proceedings to review the action of the commission. ('15 c. 210 § 28)

[4575—]29. **Appeals to district court**—Any party to a proceeding before the commission, or any party affected by any order thereof, may appeal therefrom to the district court of the county in which the principal place of business of the respondent is located, or in case the order is made in a proceeding commenced by the commission on its own motion without complaint, to the district court of any county in which the warehouseman has his principal place of business, at any time within thirty days after service of a copy of such order on the parties of record, as in this act provided, by service of a written notice of appeal, on said commission, or on its secretary. Upon service of said notice of appeal, said commission, by its secretary, shall forthwith file with the clerk of said district court, to which said appeal is taken, a certified copy of the order appealed from, together with the findings of fact on which the same is based. ('15 c. 210 § 29)

[4575—]30. **Proceedings on appeal—Orders not appealed from**—The appellant serving such notice of appeal shall, within five days after service thereof, file the same with proof of service, with a clerk of the court to which said appeal is taken, and thereupon said district court shall have jurisdiction over said appeal, and the same shall be tried therein, according to the rules relating to a trial of civil actions, so far as the same are applicable. The complainant before the commission, if there is one (otherwise the State of Minnesota), shall be designated as the complainant in the district court, and the ware-

houseman as the defendant. No further pleadings than those filed before the commission shall be necessary. Such findings of fact shall be prima facie evidence of the matters therein stated, and the order shall be prima facie reasonable, and the burden of proof upon all issues raised by the appeal shall be on the appellant. If said court shall determine that the order appealed from, is lawful and reasonable, it shall be affirmed, and the order enforced as provided by law. If it shall be determined that the order is unlawful or unreasonable, it shall be vacated and set aside. Such appeal shall not supersede the order appealed from, unless the court, upon an examination of said order and the return made on said appeal, and after giving the respondent notice and opportunity to be heard, shall so direct. If such appeal is not taken, such order shall be final, and it shall thereupon be the duty of the warehouseman affected, to adopt and publish the rates therein prescribed, and abide the order of the commission. When no appeal is taken from an order, as herein provided, the parties affected by such order shall be deemed to have waived the right to have the merits of such controversy reviewed by a court, and there shall be no trial of the merits or re-examination of the facts of any controversy in which said order was made, by any district court to which application may be made for the writ to enforce the same. ('15 c. 210 § 30)

[4575—]31. Failure to obey law or order—Application by commission to district court and proceedings therein—Whenever any warehouseman shall fail to obey any law of this state, or any order of the commission, the commission may, upon verified petition alleging such failure, apply to the district court of the county in which said warehouseman has his principal place of business, for the enforcement of such law, or order, or other appropriate relief. The court, upon such notice as it may direct, shall hear such matter as in case of an appeal from an order. On such hearing, the findings of fact upon which such order is based shall be prima facie evidence of the merits therein stated, and the court may grant any provisional or other relief, ordinary or extraordinary, legal and equitable, which the nature of the case may require, and may impose a fine of not more than \$50 for each day's failure to obey any writ, process or order of the court, in addition to all other penalties or forfeitures provided by law. A temporary mandatory or restraining order may be made in such proceedings, notwithstanding any undetermined issue of fact, upon such terms as to security as the court may direct. ('15 c. 210 § 31)

[4575—]32. Trial—The district court shall be deemed always open for all civil proceedings under this act, and any such proceedings may be brought to trial in any county in the judicial district where the same are pending, and shall take precedence over all other matters except criminal cases. Except when there is a constitutional right to a trial by jury, not expressly waived, all such proceedings shall be tried summarily by the court. ('15 c. 210 § 32)

[4575—]33. Incriminating questions—Counsel fees and disbursements—In any proceedings under this act or any law relating to warehousemen, the court, at its discretion, may require a witness to answer any question, although his answer may tend to convict him of a crime, but no person so compelled to answer shall thereafter be liable to any prosecution for such crime.

In any proceedings in district court under the provisions of this act, or any law relating to warehousemen, either by appeal or otherwise, the court may order the payment by either party of such counsel fees and disbursements, as it deems just and reasonable. ('15 c. 210 § 33)

[4575—]34. Proceedings in name of state—Appeal to supreme court—All acts or proceedings instituted by the Railroad and Warehouse Commission under this act shall be brought in the name of the state, and shall be prosecuted by the attorney general.

Any party to an appeal or other proceeding in district court, under the provisions of this act, may appeal from the final judgment or from any final order therein, in the same cases and manner as in civil actions. The appeal may be filed in the supreme court before or during any term thereof, and shall be immediately entered on the calendar and heard, upon such notice as the court may prescribe. ('15 c. 210 § 34)

[4575—]35. **Action on warehouseman's bond**—When any one licensed to do business as a public warehouseman fails to perform his duty, or violates any of the provisions of this act, any person, persons or corporations injured by such failure or violation may, with the consent of the commission, and the attorney general, bring an action in the name of the state, but to his or their own use, in any court of competent jurisdiction on the bond of such warehouseman. In such action the person, persons or corporation in whose behalf the action is brought shall file with the court a satisfactory bond for costs, and the state shall not be liable for any costs. ('15 c. 210 § 35)

[4575—]36. **Violation of act or order—Penalty**—Any warehouseman and each person, who, either individually, or acting as an officer, agent or employé of a warehouseman, violates or fails to comply with any provisions of this act, or fails to observe, obey or comply with any order, decision, rule, regulation, direction or requirement, or any part or portion thereof of the commission, made or issued under authority of this act, or who procures, aids or abets any warehouseman in his violation of this act, or in his failure to observe, obey or comply with this act, or any such order, decision, rule, regulation, direction or requirement, or any part or portion thereof, in a case in which a penalty is not otherwise provided for in this act, is guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or by both such fine and imprisonment.

Each violation of the provisions of this act, or of any order, decision, rule, regulation, direction or requirement of the commission, or any part or portion thereof, by any warehouseman, is a separate and distinct offense.

In construing and enforcing the provisions of this act, relating to penalties, the act, omission or failure of any officer, agent or employé of any warehouseman, acting within the scope of his official duties or employment, shall in each case be and be deemed to be the act, omission or failure of such warehouseman. ('15 c. 210 § 36)

[4575—]37. **Partial invalidity of act**—If any section, subdivision, sentence or clause of this act is for any reason held invalid or to be unconstitutional, such decision shall not affect the validity of the remaining portion of this act. ('15 c. 210 § 37)

[4575—]38. **Technical omissions not to invalidate acts of commission**—A substantial compliance with the requirements of this act shall be sufficient to give effect to all the acts, orders, decisions, rules and regulations of the commission, and they shall not be declared inoperative, illegal or void, for any omission of a technical nature in respect thereto. ('15 c. 210 § 38)

COMMISSION MERCHANTS

4598. Definition—License—Bond—For the purpose of this subdivision, a commission merchant is a person who may receive for sale, for account of the consignor, any agricultural products or farm produce. No person shall sell, or receive, or solicit shipments of such commodities for sale, without first obtaining a license from the Railroad and Warehouse Commission to carry on the business of a commission merchant, and executing and filing with the secretary of state a bond to the state for the benefit of such consignors; if the license authorizes the sale of grain the bond shall be not less than four thousand dollars (\$4,000.00). If the license only authorizes the sale of products other than grain the bond shall be not less than two thousand dollars. In either case the Railroad and Warehouse Commission may at any time require such an additional amount of bond as it may deem necessary to protect the consignor. (Amended '15 c. 370 § 1)

An agreement between plaintiff, a country grain dealer, and a commission merchant, pursuant to which their business was conducted, and their course of dealings thereunder, held not to relieve defendant surety company from liability on its bond given under this and the following sections, where such merchant failed to account for proceeds of sales of grain consigned to him by plaintiff (126-485, 148-465). Factors, ~~6-21/2~~ New, vol. 17 Key-No. Series.

4599. Application for license—Conditions of bonds—Separate licenses—The application for license shall be in writing, state the commodities for which license to sell is wanted, also the cities or other locations in the state where applicant intends to do business, and give the business address of the applicant and the estimated volume of business to be done monthly. If he desires a license which shall authorize him to sell grain, the bond shall be conditioned that he report to all persons consigning grain to him, and pay to them the proceeds of its sale, less charges and actual disbursements; otherwise, the bond shall be conditioned for the faithful performance of his duties as commission merchant. Separate licenses and bonds shall be required for each city or location at which consignments are received and disposed of by such commission merchant, and said licenses shall be kept posted in each office of licensee. All licenses shall expire May 31st of each year. The fee for each license shall be two dollars (\$2.00). Such license may be revoked by the commission for cause, upon notice and hearing. (Amended '15 c. 370 § 2)

4600. Commission may require confidential statements—For the purpose of fixing or changing the amount of a bond the commission shall require statements of his business from the licensee, and, if he fail to render such statements or to furnish any new bond required, the commission may revoke his license. All such statements shall be for the exclusive information of the commissioners, unless they shall be required for use in court, in which case the commissioners shall produce them. (Amended '15 c. 370 § 3)

4601. Statement to consignor—Whenever a licensee sells any grain he shall render a true statement in writing to the consignor within twenty-four (24) hours of the amount sold, price received, name and address of purchaser, and the day, hour, and minutes of the sale, and shall forward vouchers for all charges and expenses. Whenever consignments of commodities other than grain are sold, the licensee shall render a true statement in writing to the consignor within such reasonable time and in such manner and form as may be prescribed by the commission. (Amended '15 c. 370 § 4)

4602. Complaint—Investigation—Report—Whenever a consignor of a commodity, other than grain, after demand therefor, shall have received no remittance or report of its sale, or shall be dissatisfied with the remittance, or report, he may complain in writing, under oath, to the commission, who shall investigate the matter complained of. In making the investigation the commission may compel the licensee to produce all information, books, records, and memoranda concerning the matter, and they shall give the complainant a written report of the investigation. This report shall be prima facie evidence of the matters therein contained. (Amended '15 c. 370 § 5)

See note under § 4603.

4603. Action on bond—If any licensee shall fail to account for any consignment of any of the commodities mentioned in this subdivision, or to pay to the consignor monies due on such consignment, the consignor, or his agent, may file with the commission an affidavit setting forth the matters complained of. Thereafter, such consignor may bring an action upon the bond of the licensee, and recover the amount due him on account of such consignment. If such licensee has become liable to more than one consignor, and the amount of his bond be insufficient to pay the entire liability, the consignors shall be compensated in proportion to their several claims. (Amended '15 c. 370 § 6)

The provision for filing the affidavit is merely directory, and failure to file is not fatal to the right of action on the bond (122-316, 142-328). Factors, $\frac{1}{2}$.

4604. Violations—Penalty, etc.—Any person, persons, firm or corporation engaged in selling any property as herein specified, who fails or neglects to comply with any of the provisions of this act, or any of the rules of the commission therein provided for, shall be guilty of a misdemeanor and on conviction thereof in any court having competent jurisdiction, shall be punished by a fine of not less than twenty-five (\$25) dollars nor more than one hundred (\$100.00) dollars, and the Railroad and Warehouse Commission is hereby

authorized, either upon such conviction or upon its own findings after investigation, if the facts warrant it, to cancel the license of any person, persons, firm or corporation guilty of any violation of law or conduct prejudicial to the interest of those making consignments for sale, to such person, persons, firm or corporation. Where a license has been cancelled, the Railroad and Warehouse Commission may refuse to issue any license to such person, persons, firm or corporation for a term of one year.

Whenever requested to do so by any interested shipper, the Railroad and Warehouse Commission shall have power to investigate any sale or transaction carried on by any person, persons, firm or corporation licensed under this act and for that purpose, shall have the right to examine any and all books, records and accounts of any licensed commission merchant. Any licensed commission merchant or any agent in charge of such books, records or accounts who shall fail or refuse to submit such books, records, or accounts for the examination of said Railroad and Warehouse Commission shall be guilty of a misdemeanor.

It shall be unlawful to use the word commission, commission merchant or commission company on any advertising matter, letter or bill heads of any person not having a license from the commission. Any person who shall hold himself out or claim to be a licensed or bonded commission merchant, either by written, printed, or verbal representation or by the use of any letter head, statement or advertisement, without having a license from the commission, shall be guilty of a misdemeanor. (Amended '15 c. 370 § 7)

[4604—]1. **Commission merchants prohibited from being interested in sales, etc.**—No person, persons, firm or corporation whether doing business in a Chamber of Commerce, Board of Trade, or elsewhere in this state engaged in selling grain, corn or other farm products or live stock as commission merchant, or for others for a compensation in any manner, who shall hereafter receive and accept for sale for account of the consignor or owner thereof, any such property, or who shall sell or attempt to sell or dispose of such property for account of such consignor or owner, shall hereafter be interested directly or indirectly, as purchaser or otherwise than solely as the agent of such consignor or owner and according to the contract of agency in the sale, purchase or disposition of such property; and no such person, persons, firm or corporation engaged as aforesaid shall hereafter in any transaction involving such sale, purchase or disposition of such property in any manner, directly or indirectly, represent or promote in any respect whatever the interest of any other person, persons, firm or corporation than said consignor or owner of such property. ('17 c. 19 § 1)

[4604—]2. **Same—Penalty for violation**—Whoever shall violate any provision of this act shall upon conviction thereof be punished by imprisonment in the county jail not to exceed one year, or by a fine not to exceed one thousand dollars, and any license issued to such party under section 4599 of the General Statutes of Minnesota for the year 1913, shall thereupon become void and such party shall be disqualified from obtaining a new license under said law for a period of two years from and after such conviction. ('17 c. 19 § 2)

CHAPTER 28A

DEPARTMENT OF WEIGHTS AND MEASURES

4611. Department created—Jurisdiction of railroad and warehouse commission—

This act does not violate Const. art. 4 § 27, providing that no law shall embrace more than one subject, which shall be expressed in its title (124-307, 144+962). Statutes, ~~6~~ 118(1).

. Ordinance of Crookston requiring weighing of coal upon municipal scales, held not in conflict with this act (121-202, 141+106). Municipal Corporations, ~~6~~ 592; Weights and Measures, ~~6~~ 1, 5.

[4612—]1. Salary of commissioner and deputies—The salary of the Commissioner of Weights and Measures shall be Twenty-five Hundred Dollars (\$2500) per annum, and all deputies not to exceed Twelve Hundred (\$1200.-00) Dollars per annum. ('15 c. 281 § 2)

4616. Offenses and penalties, etc.—

This statute is a police regulation and changes the prior law (§ 8913), so that intent to defraud or commit wrong is not an element of the offense of selling or exposing for sale less than the quantity represented (124-307, 144+962). Weights and Measures, ~~6~~ 12.

4620. No fees for annual inspection—Cost of inspection at other times—Fees for special service, etc.—No fee shall be charged for the regular annual inspection of scales, weights, measures and weighing or measuring devices. At all other times, the cost of the inspection shall be paid by the owner when the same is performed at his request; and when made at the request of some other person the cost shall be paid by the owner, if the scale, weight, measure, and weighing or measuring device is found to be incorrect; otherwise by the person making the request. The commission shall have power to fix the fees and expenses for all special services. The sum of Ten Thousand Dollars (\$10,000.00), together with the sum in the weights and measures fund, is hereby appropriated for the payment of salaries of employes and expenses of said department for the fiscal year ending July 31st, 1915, and Thirty Thousand Dollars (\$30,000.00) annually for the fiscal years ending July 31st, 1916 and 1917, and the same or so much thereof as may be necessary, shall be allowed and paid by the state, upon the approval of a member of the Railroad and Warehouse Commission, and the state auditor. All monies collected by the department for special services, fees and penalties, shall be paid into the state treasury, and credited to the state revenue fund. ('11 c. 156 § 11, amended '15 c. 281 § 1)

[CHAPTER 28A 1]

[TELEPHONE COMPANIES]

[4623—]1. Jurisdiction of Railroad and Warehouse Commission—The Railroad and Warehouse Commission, now existing under the laws of this state, is hereby vested with the same jurisdiction and supervisory power over telephone companies doing business in this state, as it now has over railroad and express companies, and wherever the term "Commission" is used in this Act, it shall mean said Railroad and Warehouse commission. ('15 c. 152 § 1)

Section 26 repeals acts conflicting with the provisions of this act in so far as they are inconsistent herewith.

By § 27 this act shall take effect July 1, 1915.

[4623—]2. "Telephone Company" defined—The term "Telephone Company" as used in this Act shall mean and apply to any person, firm, association or any corporation, private or municipal, owning or operating any telephone line or telephone exchange for hire wholly or partly within this state, or furnishing any telephone service to the public. ('15 c. 152 § 2)

[4623—]3. Laws applicable—Except as otherwise provided in this Act, all the provisions of Chapter 28 of the Revised Laws of 1905 and acts amendatory thereof applying to railroad and express companies shall, in so far as the same are applicable apply also to telephone companies. ('15 c. 152 § 3)

[4623—]4. Adequate service—Fair and reasonable rates—It shall be the duty of every telephone company to furnish reasonably adequate service and facilities for the accommodation of the public, and its rates, tolls and charges shall be fair and reasonable for the intrastate use thereof. All unreasonable rates, tolls and charges are hereby declared to be unlawful. ('15 c. 152 § 4)

[4623—]5. Schedule of rates, rules, etc., to be filed with commission—Upon the taking effect of this Act it shall be the duty of every telephone company to forthwith file with the commission a schedule of its [its] exchange rates, tolls and charges for every kind of service, together with all rules, regulations and classifications used by it in the conduct of the telephone business, all of which shall be kept on file by the commission subject to public inspection. The commission shall require each telephone company to keep open for public inspection at designated offices, so much of said schedules and regulations as it deems necessary for the public information. ('15 c. 152 § 5)

[4623—]6. Commission to fix rates when unreasonable—Greater or less rate forbidden—Whenever such rates or schedules are found to be unreasonable by the commission, upon its own motion or upon complaint it shall prescribe reasonable rates to take the place of those found unreasonable and such new rates shall be filed in place of the rates or schedule superseded. No rates filed with the commission shall be changed by any telephone company without an order of the commissioner sanctioning the same. It shall be unlawful for any telephone company to collect or receive a greater or less rate or charge for any intrastate service rendered by it than the rate or charge named in the schedules on file with the commission, and no new rate shall take effect till the date named by the commission which shall not be less than ten days after it is filed. ('15 c. 152 § 6)

[4623—]7. Discrimination prohibited—No telephone company or any agent or officer thereof shall, directly or indirectly, in any manner whatsoever, knowingly or wilfully, charge, demand, collect or receive from any person, firm or corporation, a greater or less compensation for any intrastate service rendered or to be rendered by it than it charges, demands, collects or receives from any other firm, person or corporation for a like and contemporaneous intrastate service under similar circumstances. ('15 c. 152 § 7)

[4623—]8. Commission to prescribe uniform rules, etc.—Blanks and forms—Uniformity between federal and state governments—It shall be the duty of the commission to prescribe uniform rules and classifications pertaining to the conduct of intrastate telephone business and a system of accounting to be used by telephone companies in transacting said business, and it shall prescribe and furnish blanks and forms for reports, all of which shall conform as nearly as practicable to the rules, classifications, accounting systems and reports prescribed by the Interstate Commerce commission for the interstate business of like size companies.

The commission shall by correspondence, or conference where necessary, use its best endeavors toward establishing uniformity in practice in all matters pertaining to regulation of the business of telephone companies between the federal government and state government of this and adjacent states. ('15 c. 152 § 8)

[4623—]9. Office within state—Reports—Inspection of books, etc.—Balance sheet—Every telephone company subject to the provisions of this Act, wherever organized, shall keep an office in this state, and shall make such reports to the commission as it shall from time to time require. All books, records and files and all of its property shall be at all times subject to inspection by the commission; it shall close its accounts and take therefrom a balance sheet on December 31st each year, and on or before March 1st following, such balance sheet, together with such other information as the commission shall

require, verified by an officer of the telephone company, shall be filed with the commission. ('15 c. 152 § 9)

[4623—]10. **Physical connections, etc., with lines of other companies, etc.—“Physical connection” defined—Powers of commission, etc.**—Whenever public convenience requires the same, every telephone company shall, for a reasonable compensation, permit a physical connection or connections to be made, and telephone service to be furnished between any telephone exchange system operated by it and the telephone toll line or lines operated by another telephone company, or between its telephone toll line or lines and the telephone exchange system of another telephone company, or between its toll line and the toll line of another telephone company whenever such physical connection or connections is practicable and will not result in irreparable injury to the telephone system so compelled to be connected. The term “physical connection” as used in this section, shall mean such number of trunk lines or complete wire circuits and connections as may be required to furnish reasonable and adequate service between such telephone lines and exchanges and shall not be deemed to provide for any connection whereby one line or circuit is to be bridged upon another line or circuit. In case of failure of the telephone companies concerned to allow or agree upon such physical connection or connections, or the terms and conditions upon which the same shall be made, application may be made to the commission for an order requiring such connection and fixing the compensation, terms and conditions thereof, and if after investigation and hearing the commission shall find that such physical connections will not result in irreparable injury to such telephone properties, it shall by order direct that such connections be made, and prescribe reasonable conditions and compensation therefor and for the joint use thereof, and by whom the expense of making and maintaining such connection or connections shall be paid. Whenever application is made to the commission requesting physical connection it shall be presumed that such connection is necessary, and that the public convenience will be promoted thereby, and the burden of overcoming such presumption shall be upon the party resisting such application. The telephone companies so connecting shall give service over the connecting line or lines without preference to or discrimination against any service or telephone company whatever. ('15 c. 152 § 10)

[4623—]11. **Free or reduced rates to officers, etc.**—A telephone company may furnish service free or at reduced rates to its officers, agents or employees in furtherance of their employment, but it shall charge full schedule rates without discrimination for all other services. Provided that nothing herein shall release any telephone company from carrying out any contract now existing between it and any municipality for the furnishing of any service free or at reduced rates. Provided further that any contract for telephone service, at discriminatory rates, other than those with municipalities, shall be terminated by the company as soon as the same becomes terminable by its terms or if the company has the option to terminate such contract, said option shall be exercised and the contract terminated within three months after the passage of this act. ('15 c. 152 § 11)

[4623—]12. **Valuation of telephone companies**—The commission shall, whenever it deems the same necessary, determine the value of all the property of any telephone company devoted to the public use, and in so doing it shall, after notice to the telephone company, hold such public hearings as will give all interested parties a chance to furnish evidence and be heard. For the purpose of this act the commission is authorized to appoint engineers, examiners, experts, clerks, accountants and other assistants as it may deem necessary at such rates of compensation as it may prescribe.

In the discharge of their duties such appointees shall have every power of any inquisitorial nature granted in this act to the commission. The commission may conduct any number of investigations contemporaneously through its individual members or appointees, and may delegate to its individual members the taking of all testimony on any investigation or hearing. ('15 c. 152 § 12)

[4623—]13. **Power of commission to authorize construction of telephone lines, etc.—Second telephone exchange, etc.**—For the purpose of bringing about uniformity of practice, the commission shall have the exclusive right to grant authority to any telephone company to construct telephone lines or exchanges for furnishing local service to subscribers in any municipality of this state, and to prescribe the terms and conditions upon which construction may be carried on, and whenever the commission grants such authority it shall be in the form of a permit of indeterminate duration—coupled with the right to the municipality to purchase the telephone plant within the city, as hereinafter provided. No local telephone exchange shall be constructed or installed in any city or village for furnishing local service to subscribers in such village or city, where there is in operation in such village or city a local exchange already furnishing such service, without first securing from the commission a declaration, after a public hearing, that public convenience requires such second telephone exchange; but the governing body of any municipality shall have the same powers of regulation which it now possesses with reference to the location of poles and wires so as to prevent any interference with the safe and convenient use of streets and alleys by the public. ('15 c. 152 § 13)

[4623—]14. **Extension of long distance lines**—Any telephone company may extend its long distance lines into or through any city or village of this state for the furnishing of long distance service only, subject to the regulation of the governing body of such village or city relative to the location of its poles and wires and the preserving of the safe and convenient use of such streets and alleys to the public. ('15 c. 152 § 14)

[4623—]15. **Surrender of license and securing new authority**—Any telephone company operating under any existing license, permit or franchise or which shall hereafter before the taking effect of this act, acquire any license, permit or franchise, may, upon filing with the clerk of the municipality which granted such franchise, a written declaration that it surrenders such license, permit or franchise, receive in lieu thereof, an indeterminate permit as defined in this act; and such telephone company shall thereafter hold such permit under all the terms, conditions and limitations of this act. The filing of such declaration shall be deemed a waiver by such telephone company of the right to insist upon the fulfillment by any municipality of any contract theretofore entered into relating to any rate, charge or service made subject to regulation by this act. Upon filing such written declaration by the telephone company, the clerk of the municipality, shall file with the commission a certificate showing that fact and the date thereof, and thereupon it shall receive an indeterminate permit from the commission conferring the same rights as if originally granted under this act. ('15 c. 152 § 15)

[4623—]16. **Right of municipalities to operate telephone exchanges, etc.—Submission to voters**—Any municipality shall have the right to own and operate a telephone exchange within its own borders, subject to the provisions of this act, and it may construct such plant, or purchase an existing plant by agreement with the owner, or where it cannot agree with the owner on price, it may acquire an existing plant by condemnation as hereinafter provided, but in no case shall a municipality construct or purchase such a plant or proceed to acquire an existing plant by condemnation until such action by it is authorized by a majority of the electors voting upon the proposition at a general election or a special election called for that purpose, and if the proposal is to construct a new exchange where an exchange already exists, it shall not be authorized to do so unless sixty-five (65%) per cent of those voting thereon vote in favor of the undertaking. ('15 c. 152 § 16)

[4623—]17. **Acquisition of existing plant by municipality—Commission to fix compensation—Appeal**—When a municipality decides in the manner above provided to acquire an existing plant by condemnation it shall give notice to the commission whose duty it shall be thereupon to determine the just compensation which the owner of the plant is entitled to receive therefor from said municipality. Before deciding upon such compensation said commission shall at a public meeting which may be adjourned from time to time

hear all interested parties on the question involved. The commission shall by order fix the compensation and furnish a copy of its order to the municipality, and to the telephone company concerned. An appeal may be taken to the district court of the county wherein such plant is situated from that part of the order fixing the compensation to be paid, within thirty days, by either party, which appeal shall be tried the same as other appeals hereunder; if no such appeal is taken the order of the commission shall become final at the end of thirty days, and when appeal is taken the decision of the district court or of the supreme court if taken there from the district court shall be final. ('15 c. 152 § 17)

[4623—]18. **Valuation of telephone property for rate making—What rates allowed**—In determining the value of any telephone property for rate making purposes, no valuation shall be allowed upon the value of any franchise granted by the state or any municipality where no payment was or is being made to the state or municipality on account thereof. The requirement as to reasonableness of rates shall apply to each exchange unit as well as to telephone plants as a whole. No telephone rates or charges shall be allowed or approved by the commission under any circumstances, which are inadequate and which are intended to or naturally tend to destroy competition or produce a monopoly in telephone service in the locality affected. ('15 c. 152 § 18)

[4623—]19. **Commission to change annual depreciation charge, etc.**—The commission may fix and from time to time change the annual depreciation charge which shall be made by each telephone company which charge shall be sufficient to provide the amounts required over and above the expense of current maintenance, to keep its property in a state of efficiency corresponding to the needs and progress of the industry. Such depreciation fund shall be carried in a separate account and moneys in this fund may be invested and the income thereof returned to such depreciation fund or said moneys may be expended in renewals or in new construction. ('15 c. 152 § 19)

[4623—]20. **Purchase of property of other company, etc.**—It shall be unlawful for any telephone company subject to the provisions of this act to purchase the property or capital stock, bonds or other obligations of any other telephone company doing business within the state, without first obtaining the consent of the commission thereto. Nothing herein shall be deemed to prevent the holding of stock heretofore lawfully acquired or to prevent the acquisition of additional stock by any telephone company owning a majority of the stock of any telephone company at the time of the taking effect of this act. ('15 c. 152 § 20)

[4623—]21. **Records of commission—Transcripts**—A full and complete record shall be kept by the commission of all proceedings had before it upon any formal investigation or hearing and all testimony received or offered shall be taken down by the stenographer appointed by the commission and a transcribed copy of such record shall be furnished to any party to such investigation upon demand without charge.

Whenever an appeal is taken from any order of the commission under the provisions of this act, the commission shall forthwith cause a certified transcript of all proceedings had, of all pleadings and files, and all testimony taken or offered before it upon which such order was based, showing particularly what, if any, evidence, offered was excluded, to be made and filed with the clerk of the district court where such appeal is pending. ('15 c. 152 § 21)

[4623—]22. **Appeals from commission, etc.—Procedure**—Any party to a proceeding before the commission or the attorney-general may make and perfect an appeal from such order as provided in Sections 1971–1972, Revised Laws of 1905, and acts amendatory thereof [4191–4192].

Upon such appeal being so perfected it may be brought on for trial at any time by either party upon ten days' notice to the other and shall then be tried by the court without the intervention of a jury, and shall be determined upon

the pleadings, evidence and exhibits introduced before the commission and so certified by it. At such trial the findings of fact made by the commission shall be prima facie evidence of the matters therein stated, and said order shall be deemed prima facie reasonable, and if the court finds that the order appealed from is unjust, unreasonable and not supported by the evidence, it shall make such order to take the place of the order appealed from as is justified by the record before it. If the court finds from an examination of the record that the commission erroneously rejected evidence which should have been admitted, it shall remand the proceedings to the commission with instructions to receive such evidence so rejected and any rebutting evidence and make new findings and return the same to the court for further proceedings. In such case the commission after notice to the parties in interest shall proceed to rehear the matter in controversy, and shall receive such wrongfully rejected evidence and any rebutting evidence offered and shall make new findings as upon the original hearing and shall transmit the same and such new record, properly certified, to the court wherein said appeal is pending, whereupon said matter shall be again considered in said court in the same manner as in an original appeal. Either party may appeal to the supreme court from the judgment of the district court, as in other civil actions except that the appeal must be taken within thirty days from the date of notice of the entry of such judgment.

Where an appeal is taken to the supreme court the appellant shall cause a return to be made to said court within thirty days from the date of appeal, otherwise said appeal shall be deemed abandoned and may be dismissed upon motion of the respondent. When said return on said appeal is received by the clerk of the supreme court, said cause shall be placed on the calendar of the term then pending, or if none is then pending, then of the one next ensuing and it shall be assigned and brought on for hearing as other causes on such calendar. ('15 c. 152 § 22)

[4623—]23. **Order, where no appeal, to be final**—If no appeal is taken from any order of the commission as above provided, then in all litigation thereafter arising between the state and any telephone company or between private parties and any telephone company, the said order shall be deemed final and conclusive. ('15 c. 152 § 23)

[4623—]24. **Penalty for discrimination**—Any telephone company, and if it be a corporation, the officers thereof, violating the provisions of this act as to discrimination between persons or places shall be guilty of a gross misdemeanor. ('15 c. 152 § 24)

[4623—]25. **Failure to comply with law or order, etc.—Duty of attorney general**—Whenever any telephone company fails to comply with any law of the state or any order of the commission after it has become final, or any order or judgment of the district court or the supreme court in any cases taken to the said courts or either of them on appeal, after such judgment or order has become final, it shall be the duty of the attorney general to apply to the district court in the name of the state in any county in which the plant of said telephone company or any part thereof is situated, for a mandatory injunction or other appropriate writ to compel obedience to said law, order or judgment, and the district court shall punish any disobedience of its orders in such enforcement proceedings as for contempt of court. ('15 c. 152 § 25)

CHAPTER 28B

DEPARTMENT OF BANKING

4624. Department established—

This act held not violative of Const. art. 4 § 27, providing that no law shall embrace more than one subject, expressed in its title (121-381, 141+526). Statutes, §109.

4629. Refusal to obey directions of examiner, etc.—Penalty—

Indictment held sufficient (121-381, 141+526). Banks and Banking, §61.

A "false report" is made, where it is submitted without knowledge of its truth or falsity (121-381, 141+526). Banks and Banking, §61.

[4631—]1. **Examiners and employes forbidden to be stockholder, officers, etc., of bank**—No person who is a bank examiner, or other officer or employee of the department of banking of this state shall be a stockholder, director, officer, trustee, assignee or employee of any banking, savings or financial institution or corporation within the state. Any person violating the provisions of this act shall be removed from such office or employment by the superintendent of banks. ('15 c. 164 § 1)

4635. Fees for examination—All banks organized under the laws of this state shall pay on or before the 1st day of February, 1910, and annually thereafter, into the state treasury the following sums: Those having a paid up capital of less than fifteen thousand dollars, twenty-five dollars; those having a capital of fifteen thousand dollars and less than twenty-five thousand dollars, thirty dollars; those having a capital of twenty-five thousand dollars and less than fifty thousand dollars, forty dollars; those having a capital of fifty thousand dollars and less than seventy-five thousand dollars, fifty dollars; those having a capital of seventy-five thousand dollars and less than one hundred thousand dollars, sixty dollars; those having a capital of one hundred thousand dollars and less than one hundred and fifty thousand dollars, seventy-five dollars; those having a capital of one hundred and fifty thousand dollars and less than two hundred thousand dollars, eighty-five dollars; those having a capital of two hundred thousand dollars and less than three hundred thousand dollars, one hundred dollars; those having a capital of three hundred thousand dollars and less than four hundred thousand dollars, one hundred and twenty dollars; those having a capital of four hundred thousand dollars and less than five hundred thousand dollars, one hundred and thirty dollars; those having a capital of five hundred thousand dollars and less than six hundred thousand dollars, one hundred and forty dollars; those having a capital of six hundred thousand dollars and less than seven hundred and fifty thousand dollars, one hundred and fifty dollars; those having a capital of seven hundred and fifty thousand dollars and less than one million dollars, two hundred dollars; those having a capital of one million or more, two hundred and twenty-five dollars. All trust companies so organized shall so pay the following sums: Those having a paid up capital of fifty thousand dollars and less than seventy-five thousand dollars, fifty dollars; those having a paid up capital of seventy-five thousand dollars and less than one hundred thousand dollars, sixty-five dollars; those having a paid up capital of one hundred thousand dollars and less than two hundred thousand dollars, eighty-five dollars; those having a paid up capital of two hundred thousand dollars and less than three hundred thousand dollars, one hundred dollars; those having a paid up capital of three hundred thousand dollars and less than five hundred thousand dollars, one hundred and forty dollars; and of five hundred thousand dollars or more, one hundred and seventy-five dollars. All general building and loan associations shall so pay for the first one hundred thousand dollars of their assets, or fractional part thereof, twenty dollars; for the next five hundred thousand dollars, ten dollars for each one hundred thousand dollars or fractional part thereof, and for the excess of over six hundred thou-

sand dollars, five dollars for each one hundred thousand dollars or fractional part thereof. All local building and loan associations shall so pay a fee of ten dollars. All savings banks organized under the laws of this state shall so pay the following fees: Those having assets of two hundred and fifty thousand dollars or less, thirty dollars; of more than two hundred and fifty thousand dollars, and not exceeding five hundred thousand dollars, fifty dollars; of more than five hundred thousand dollars and not exceeding one million dollars, seventy-five dollars; of more than one million dollars and not exceeding five million dollars, one hundred dollars; of more than five million dollars, ten dollars additional for each additional one million dollars or fractional part thereof. (Amended '17 c. 299 § 1)

CHAPTER 29

PUBLIC HEALTH

4640. General and special rules—The board may adopt, alter, and enforce reasonable regulations, of permanent application throughout the whole or any portion of the state, or for specified periods in parts thereof, for the preservation of the public health. Upon the approval of the attorney general and the due publication thereof such regulations shall have the force of law, except in so far as they may conflict with a statute or with the charter or ordinances of a city of the first class upon the same subject. In and by the same the board may control, by requiring the taking out of licenses or permits, or by other appropriate means, any of the following matters:

1. The manufacture into articles of commerce, other than food, of diseased, tainted, or decayed animal or vegetable matter;
2. The business of scavenging and the disposal of sewage;
3. The location of mortuaries and cemeteries, and the removal and burial of the dead;
4. The management of lying-in houses and boarding places for infants, and the treatment of infants therein;
5. The pollution of streams and other waters, and the distribution of water by private persons for drinking or domestic use;
6. The construction and equipment, in respect to sanitary conditions, of schools, hospitals, almshouses, prisons, and other public institutions, and of lodging houses and other public sleeping places kept for gain;
7. The treatment, in hospitals and elsewhere, of persons suffering from communicable diseases, including all manner of venereal disease and infection, the disinfection and quarantine of persons and places in case of such disease, and the reporting of sicknesses and deaths therefrom;
- 7-A. The prevention of infant blindness and infection of the eyes of the newly born by the designation of a prophylactic to be used in such cases and in such manner as the board may direct, unless specifically objected to by the parents or a parent of such infant.
8. The furnishing of vaccine matter; the assembling, during epidemics of smallpox, with other persons not vaccinated. But no rule of the state board or of any public board or officer shall at any time compel the vaccination of a child, or shall exclude, except during epidemics of smallpox and when approved by the local board of education, a child from the public schools, for the reason that such child has not been vaccinated. Any person thus required to be vaccinated may select for said purpose any licensed physician, and no rule shall require the vaccination of any child whose physician shall certify that by reason of his physical condition vaccination would be dangerous;
9. The accumulation of filthy and unwholesome matter to the injury of the public health, and the removal thereof; and
10. The collection, recording, and reporting of vital statistics by public

officers, and the furnishing of information to such officers, by physicians, undertakers, and others, of births, deaths, causes of death, and other pertinent facts. (Amended '17 c. 345 § 1)

School authorities, including members of boards of education, have authority to temporarily exclude from school attendance pupils who have been exposed to contagious or infectious diseases, and the danger of contracting and spreading the disease is sufficient cause for voting to so exclude them (132-375, 157+501). Schools and School Districts, §=158(1).

4643. Local boards—Health officers—

Cited (130-474, 153+869).

4646. Necessary help—To whom chargeable, etc.—The health officer in a municipality or the chairman of the board of supervisors in a township, shall employ at the cost of the health district over which his local board of health has jurisdiction and in which the person afflicted with a communicable disease is located, all medical and other help necessary in the control of such communicable disease, or for carrying out within such jurisdiction the lawful regulations and directions of the state board of health, its officers, or employes, and upon his failure so to do the state board of health may employ such assistance at the expense of the district involved. Any person whose duty it is to care for himself or another afflicted with a communicable disease shall be liable for the reasonable cost thereof to the municipality or town paying such cost, excepting that the municipality or town constituting such district shall be liable for all expense incurred in establishing, enforcing, and releasing quarantine, half of which may be recovered from the county as provided for under sections 4647 and 4648, general statutes of 1913. (Amended '17 c. 427 § 1)

4649. Vital statistics—State board to have charge—

Sp. Laws 1891 c. 423 cited—Laws 1911 c. 250, held not to extend or amend this act, so as to violate Const. art. 4 §§ 33, 34 (124-136, 144+748). Statutes, §=134.

Laws 1911 c. 250 cited—Title held sufficient to comply with Const. art. 4 § 27 (124-136, 144+748). Statutes, §=110½(1).

4651. Certificate of birth—By whom furnished—Contents—The physician or midwife attending at the birth of any child, or, if there is no attending physician or licensed midwife, the father or mother, shall, within ten days thereafter, subscribe and file with the local registrar of the district within which the birth occurs, a certificate of birth specifying:

Place of birth including state, county, city, village or town with the street and house number, if any, or in lieu thereof the name of the hospital or other private, public or state institution, if in such institution.

Full name of child. If the child dies without being named before the certificate is filed enter the word "unnamed" with the date of death.

Male or female.

Whether one of twins, triplets or other plural birth and the number in order of birth.

Legitimate or no.

Date of birth, including year, month, day and hour.

Full name of father, provided that if the child is illegitimate the name or residence of, or other identifying details relating to, the putative father shall not be entered without his consent, except as provided in section 4660-A.

Residence of the father.

Color or race of father—as white, colored, Indian, Chinese or other.

Age of father at last birthday.

Birthplace of father; state or foreign country.

Occupation of father with a statement of the trade, profession or particular kind of work; or the general nature of the industry or business engaged or employed in.

Full maiden name of mother.

Residence of mother.

Color or race of mother—as white, colored, Indian, Chinese or other.

Age of mother at last birthday.

Birthplace of mother; state or foreign country.

Occupation of the mother with a statement of the trade, profession or particular kind of work; or the general nature of the industry or business engaged in.

Number of children born to this mother, including present birth.

Number of children born of this mother now living.

The fact of attendance and that the birth occurred at the time stated.

Date of making and address of the person subscribing.

If the child is one of a plural birth a separate certificate for each child shall be filed.

When the birth occurs in any lying-in hospital or in any private, public, charitable or state institution, without attendance by a physician or licensed midwife, the superintendent, manager, or person in charge shall make and file the certificate of birth.

If the birth occurs in any hotel, rooming or boarding house, or in any private dwelling or apartment other than the home of the parents, the keeper or occupant shall immediately notify the local registrar of that fact. The local registrar shall then procure the necessary information and signature for a proper certificate of birth.

The attending physician or midwife shall deliver to the parents a blank for a supplemental report of the given name if the child is not named at the time of making the certificate of birth.

When a certificate of birth is filed without the given or baptismal name the local registrar shall deliver to the parents a blank for a supplemental report of the name. Such supplemental report shall be made and filed with the local registrar as soon as the child is named. If such report is not filed within thirty days from the date of birth the local registrar shall obtain such name by other means. (Amended '17 c. 220 § 1)

By § 7 this act shall take effect January 1, 1918.

Admissibility of certificate as evidence (see 134-165, 158+920).

4652. Certificate of death—By whom obtained and filed—Contents—The undertaker, or person acting as such, at the burial of any person dying in this state shall obtain and file with the local registrar of the district in which the death occurs, a certificate of death containing:

A statement, authenticated by the signature of some person cognizant of the facts specifying;

Place of death, including state, county, city, village or town, with the name of the street and house number, or in lieu thereof, the name of the hospital or other private, public or state institution, if in such institution. If in an industrial or mining camp, or mine, the name of the camp or mine.

Full name of deceased. If an unnamed child the surname preceded by "unnamed."

Male or female.

Color or race—as white, colored, Indian, Chinese or other.

Single, married, widowed or divorced.

Date of birth, including year, month and day.

Age in years, months and days. If less than one day, the hours or minutes.

Occupation. If the person had any remunerative employment, statement of the trade, profession, or particular kind of work; or the general nature of the industry or business engaged or employed in.

Birthplace; state or foreign country.

Name of father, provided that if the deceased was of illegitimate birth the name or residence of, or other identifying details relating to, the putative father shall not be entered without his consent, except as provided in section 4660-A.

Birthplace of father; state or foreign country.

Maiden name of mother.

Birthplace of mother; state or foreign country.

A medical certificate subscribed by the attending physician, together with his address and date of making, stating fact and time of death, giving year, month, day and hour; time of attendance; when last seen alive; the disease or injury causing death, with contributory cause or complication, and the

duration of the illness; if from violence, the means and circumstances of the injury and whether indicating accident, suicide or homicide. Provided, that the medical certificate shall be made and subscribed by the coroner whenever the cause of death is investigated by him. Provided further, that in cities of the first, second and third class the health officer, and in towns, villages and cities of the fourth class the local registrar, or a sub-registrar, shall make and subscribe the medical certificate for any death occurring therein without medical attendance or investigation by the coroner. If the local registrar, or sub-registrar, is unable to determine the cause of death he shall refer the case to a physician, or to the coroner, for certification.

When the death occurs in a hospital or other institution or place, other than the home of the deceased, a statement of the length of time at the place of death, length of time in the state, usual place of residence and where the disease was contracted.

A statement showing place and date of burial signed by the undertaker with his address.

In the case of a child dead at birth a certificate of birth having the word "stillbirth" inserted in place of the name, and, also a certificate of death shall be made and filed with the local registrar, and a burial permit issued as hereinafter provided. The medical certificate shall be signed by the attending physician and shall state the cause of death as "stillborn" with the cause of the stillbirth, whether a premature birth and, if so, the period of utero-gestation in months. Provided: that a certificate of birth or death shall not be required for a child that has not advanced to the fifth month of utero-gestation.

In case of stillbirths occurring without an attending physician the medical certificate shall be made and subscribed as is herein provided in case of death without medical attendance. (Amended '17 c. 220 § 2)

4653-A. Public record of births—Immediately upon the receipt of a certificate of birth not accompanied with a certificate of death of the same child the local and state registrars, respectively, shall transcribe therefrom into a book to be known as the "public record of births" the following items of information: Name, sex, color or race and date of birth of child; county and city, town or village where birth occurred; name and age of mother. The public record of births shall be open to examination by all persons desiring to consult it, and from such book only shall transcripts be made for use in connection with school attendance and employment. ('17 c. 220 § 3)

1917 c. 220 § 3 adds a section to be known as 4653-A.

4660. Fees of local registrars, etc.—

R. L. 1905 § 2141 and Laws 1909 c. 23 cited—124-136, 144-748.

4660-A. Record of paternity of illegitimate child—Whenever the clerk of a district court shall report to the state registrar that a judgment has been entered determining the paternity of an illegitimate child the state registrar shall record the name of the father, and sufficient data to identify the judgment, in connection with the record of the birth of the child appearing in his office, and also in connection with the record of the death of the child, if there be such record. A report by the clerk of the subsequent vacation of such judgment shall be recorded in like manner. ('17 c. 220 § 4)

1917 c. 220 § 3 adds sections to be known as sections 4660-A and 4660-B.

4660-B. Disclosure of illegitimacy forbidden, etc.—Except when so ordered by a court of record no member of the state board of health nor any state or local registrar, nor any person connected with the office of either, shall disclose the fact that any child was either legitimate or illegitimate. The district court shall have jurisdiction, upon petition against and notice to the state registrar, to issue such orders permitting or requiring the inspection of records of births and deaths, as to it may seem just and proper, and the making and delivery of certified copies thereof. ('17 c. 220 § 4)

See note under § 4660-A.

4661. Certified copies of record as evidence—Fees—The state registrar, or any local registrar, shall furnish any applicant therefor a certified copy of the record of any birth or death recorded under the provisions of this act;

provided that the fact that any child was either legitimate or illegitimate, or other facts from which such fact can be determined, shall not be disclosed except when ordered by a court of competent jurisdiction in accordance with section 4660-B. For the making and certification of a complete record the registrar shall be entitled to receive a fee of fifty cents, to be paid by the applicant; for a transcript from the public record of births he shall be entitled to a fee of twenty-five cents, to be paid in like manner. Such copy of the record of a birth or death, when certified by the state or local registrar to be a true transcript therefrom, shall be prima facie evidence of the facts therein stated in all courts in this state. The state registrar shall keep a correct account of all fees or moneys received by him under the provisions of this act, and pay the same over to the state treasurer at the end of each month. (Amended '17 c. 220 § 5)

A certified copy of birth records being admissible under this section, it would seem that an original certificate in the custody of the proper official is equally admissible (134-165, 158+920). Evidence, *see* 334(1).

4662. Penalties.—Any person who shall violate any of the provisions of this act, or shall wilfully neglect or refuse to perform any duty imposed upon him thereby, or shall furnish false information affecting any certificate or record provided in this chapter, or who shall disclose any information in violation of section 4660-B or 4661, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars or imprisoned in the county jail for a period of not more than ninety days. (Amended '17 c. 220 § 6)

4666. Offensive trades—

A rendering plant is within the statute (130-474, 153+869). Licenses, *see* 22.

Evidence on an appeal to the district court, pursuant to this section and §§ 4667 and 4668, from an order of a town board denying an application to operate a rendering plant within the limits of the town, held to sustain a finding that the action of the town board was arbitrary, oppressive, and unreasonable (161+263). Licenses, *see* 22.

Right of appeal (see 130-474, 153+869; note under § 4668, post).

4667. Assignment of places, etc.—

Right of appeal (see 130-474, 153+869; note under § 4668, post).

4668. Appeal to district court—

Under this section and §§ 4666 and 4667, the right of appeal is not confined to orders revoking permission to conduct a business in which the person to whom the notice is directed is already engaged, and an appeal will lie from an order of a town board of health denying an application for a permit to operate a rendering plant. The court on appeal does not try the matter anew as an administrative body, and substitute its findings for those of the board; and it will not disturb the action of the board, unless such action is arbitrary, oppressive, and unreasonable, or is without evidence to support it, or is contrary to law (130-474, 153+869). Licenses, *see* 22.

That both parties assented to the jury passing on the propriety of the license, regardless of the action of the town board, did not confer jurisdiction (130-538, 153+1095). Courts, *see* 24, 39.

CHAPTER 30

LIVE STOCK SANITATION

4696. Killing—Owner to be notified—Appraisal—Protest—Autopsy, etc.—Whenever the state live stock sanitary board shall decide upon the killing of an animal affected with the disease of tuberculosis, glanders or foot-and-mouth disease, it shall notify the owner or keeper of such decision, when [in] the judgment of the state live stock sanitary board, such animal may be ordered transported for immediate slaughter by said board, through its executive officer to any abattoir within the state where the United States Bureau of Animal Industry maintains inspection, and said live stock sanitary board shall pay the expense [of] said transportation and yardage.

Before being removed from the premises of owner, there shall be appointed

three (3) competent disinterested men, one appointed by the state, one by the owner, and a third by the first two, to appraise such animal at its cash value.

Such appraisal shall in no case exceed sixty dollars (\$60) for a cow and one hundred twenty-five dollars (\$125) for a horse, except in the case of pure bred cattle and horses, where the pedigree shall be proved by certificates of register from the herd books where registered, and in that case the maximum appraisal shall not exceed one hundred and fifty dollars (\$150.)

If upon slaughter such animal is found by the inspector in charge of such abattoir, or veterinarian of the state live stock sanitary board, to be free from any contagious or infectious disease, then the full amount of such appraisal, less the value of the carcass, shall be paid to the owner of such animal from the funds hereby appropriated for the purpose of carrying out this act.

But if upon post mortem examination such animal shall be found to be afflicted with tuberculosis, glanders or foot-and-mouth disease, then and in that case the value of the carcass shall be deducted from the appraised value of the living animal; three-fourths ($\frac{3}{4}$) of the remainder shall be paid to the owner by the state, provided the animal has been kept for one year or since its birth in good faith in the state prior to the killing thereof.

The owner or keeper may file with the board which has ordered the killing, within forty-eight hours after being notified, a protest stating therein under oath that to the best of his knowledge and belief the animal is not infected with tuberculosis, glanders or foot-and-mouth disease; blank protest shall be furnished by the board which has ordered such killing.

Thereupon, if the animal be killed, an autopsy shall be held by three (3) experts, who shall be graduate veterinarians of a recognized college, one appointed by the state board, one by the owner, to be paid by the owner, and the third by the first two, to be paid by the state, who shall appraise such animal before it is killed at its cash value, and the autopsy shall then be held upon such animals by the above mentioned veterinarians.

If the autopsy shows that the animal is entirely free from any such disease, the full cash value thereof immediately before the killing shall be paid to the owner by the state, less the value of the carcass, but if found to be diseased, the owner shall be paid three-fourths ($\frac{3}{4}$) value, as hereinbefore provided.

The appraisements made under this act shall be in writing and signed by the appraisers and certified by the local board of health and the state live stock sanitary board, respectively, to the auditor of the state, who shall draw a warrant on the state treasurer for the amount thereof.

When cattle have been bought in good faith for slaughtering purposes by butchers who are retail dealers, and the carcasses thereafter found to be infected with tuberculosis, it shall be the duty of the local board of health to appoint three (3) disinterested persons to appraise the value of said carcass, and the owner of said carcass shall be entitled to receive from the state two-thirds ($\frac{2}{3}$) of the amount of such appraisement, and the hide shall also be returned to him; provided, however, that this provision shall not apply to a slaughtering or packing house that has a state or United States government inspection system. (Amended '15 c. 114 § 1)

[4696—]1. **Claims for animals killed, how paid**—The Live Stock Sanitary Board of this state is hereby authorized to pay out of the unexpended balance remaining in the appropriation made by Section thirty-eight (38) of Chapter four hundred and one (401) of the General Laws of 1913, such claims now on file with said board as the board determine to be just claims therefor for animals killed in order to suppress any dangerous, contagious or infectious disease, as authorized by Chapter one hundred and forty-eight (148) General Laws of 1913, in cases where the killing of such animals was not ordered by such board prior to the killing thereof, where after due investigation by said board the killing of such animals has been approved by such board as having been necessary for the purpose of suppressing such diseases, and where such board has determined that the killing of such animals was necessary for such purpose and where such claims are in all respects just claims and the claimants entitled to payment thereof under the provisions of said Chapter one hundred and forty-eight (148) of the General Laws

of 1913 [4696], except that the killing of the animals, for which such claims are made, was not ordered by said board prior to such killing. ('15 c. 337 § 1)

4717-4720. [Repealed.]

See note under § [7520—]1.

[4720—]1. Enlargement, etc., of hog cholera serum plant—Appropriation—That the sum of ten thousand (\$10,000.00) dollars, or as much thereof as may be necessary, is hereby appropriated from any moneys in the State Treasury not otherwise appropriated, for the enlargement and equipment of the said hog cholera serum plant of the State of Minnesota at the University Farm, same to be immediately available. ('15 c. 87 § 1)

Section 8 provides "that all acts and parts of acts inconsistent with this act are hereby repealed."

The act is entitled "An act to appropriate * * * and repealing Chapter 313, General Laws 1913" [§§ 4717-4720].

[4720—]2. Same—Appropriation for materials, etc.—That the sum of Twenty Thousand (\$20,000.00) Dollars, or as much thereof as may be necessary, is hereby appropriated from any money in the State Treasury, not otherwise appropriated, for purchasing materials and defraying the cost and expense in the manufacture, sale and distribution of hog cholera serum, vaccine or other biological products, Ten Thousand (\$10,000) Dollars of said sum to be immediately available and Ten Thousand (\$10,000) Dollars to be available for the fiscal year ending July 31, 1916. ('15 c. 87 § 2)

[4720—]3. Same—Serum, how sold, etc.—That the serum manufactured at the said plant shall be sold and distributed, as near as may be, at actual cost to any citizen who is a resident of this State and who applied for same as herein prescribed by the said state serum plant, and such selling price shall be stated on the package. ('15 c. 87 § 3)

[4720—]4. Same—Surplus serum—Purchase of serum, etc.—Precautions—That surplus serum produced by said hog cholera serum plant above a reasonable reserve may be sold out of the State at not less than cost of production.

That in case of need said State serum plant shall be authorized to purchase hog cholera serum, vaccine or other biological products which are deemed reliable and may sell the same at approximate cost in the same manner and under the same regulations as prescribed for serum from the hog cholera serum plant of the State of Minnesota.

Provided further that the said State Serum Plant before selling or distributing any such hog cholera serum, vaccine or other biological products shall exercise all due precautions in purchasing from government licensed plants and shall conduct such inspection or tests of said hog cholera serum, vaccine or other biological products as may appear reasonably necessary to insure reliable preparation. ('15 c. 87 § 4)

[4720—]5. Same—Duty of veterinary division of university—Serum, how administered—Duty of Department of Agriculture—The Veterinary Division of the State University shall establish in each county of this State, as necessity may demand, one or more distributing centers where such serum, vaccine or other biological products shall be had for sale, and such serum may be administered by any person upon his own hogs, but no person, except licensed veterinarians, shall administer said serum upon the hogs of another unless authorized to do so by the State Live Stock Sanitary Board. Said Department of Agriculture shall provide instruction in the proper method of administering said serum, to persons who apply therefor and certify to the State Live Stock Sanitary Board for license, said persons when in the judgment of such Department they have qualified themselves therefor. ('15 c. 87 § 5)

[4720—]6. Same—Virus not to be administered by unauthorized person—Penalty—No hog cholera virus shall be used or administered by any person except he be authorized thereto by the State Live Stock Sanitary Board. Any person using or administering such virus and not so authorized shall be

guilty of a misdemeanor, the minimum punishment whereof shall be a fine of \$25.00 or imprisonment for thirty (30) days, and provided further that the use or administration of hog cholera virus for each lot of hogs shall constitute a separate and additional misdemeanor. ('15 c. 87 § 6)

[4720—]7. **Same—Proceeds of sale, how disposed of**—That all moneys collected from the sale of said hog cholera serum, vaccine or other biological products as provided in Sections three (3) [4720—3] and four (4) [4720—4] of this Act shall be paid into an operation and maintenance fund, and the same is hereby appropriated for the operation of the hog cholera serum plant of the State of Minnesota. ('15 c. 87 § 7)

[CHAPTER 31A]

[HOUSING ACT FOR CITIES OF FIRST CLASS NOT UNDER HOME RULE CHARTERS]

ARTICLE I—GENERAL PROVISIONS

[4755—]1. **Short title and application**—This act shall be known and may be cited as The Housing Act for cities of the first class, and shall apply to every city of the first class of the state not organized under section 36 of article IV of the State Constitution. ('17 c. 137 § 1)

[4755—]2. **Definitions**—Certain words in this act are defined for the purpose thereof as follows. Words used in the present tense include the future; words in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural the singular; the word "person" includes a corporation as well as a natural person.

(1) **Dwelling**—A "dwelling" is any house or building or portion thereof which is occupied in whole or in part as a home, residence, or sleeping place of one or more human beings, either permanently or transiently.

(2) **Class of dwellings**—For the purpose of this act dwellings are divided into the following classes: (a) "private-dwellings," (b) "two-family-dwellings," and (c) "multiple-dwellings."

(a) A "private-dwelling" is a dwelling occupied by but one family alone.

(b) A "two-family-dwelling" is a dwelling occupied by but two families alone.

(c) A "multiple-dwelling" is a dwelling occupied otherwise than as a private-dwelling or two-family-dwelling.

(3) **Classes of multiple-dwellings**—All multiple-dwellings are dwellings and for the purposes of this act are divided into two classes, viz. Class A and Class B.

Class A. Multiple-dwellings of Class A are dwellings which are occupied more or less permanently for residence purposes by several families and in which the rooms are occupied in apartments, suites or groups. This class includes tenement houses, flats, apartment houses, apartment hotels, bachelor apartments, studio apartments, kitchenette apartments, and all other dwellings similarly occupied whether specifically enumerated herein or not.

Class B. Multiple-dwellings of Class B are dwellings which are occupied, as a rule transiently, as the more or less temporary abiding place of individuals who are lodged, with or without meals, and in which as a rule the rooms are occupied singly. This class includes hotels, lodging houses, boarding houses, furnished-room houses, lodgings, club houses, convents, asylums, hospitals, jails, and all other dwellings similarly occupied whether specifically enumerated herein or not, except fire houses.

(4) **Hotel**—A "hotel" is a multiple-dwelling of Class B in which persons are lodged for hire and in which there are more than fifty sleeping rooms,

a public dining room for the accommodation of at least fifty guests, and a general kitchen.

(5) **Mixed occupancy**—In cases of mixed occupancy where a building is occupied in part as a dwelling, the part so occupied shall be deemed a dwelling for the purposes of this act and shall comply with the provisions thereof relative to multiple-dwellings.

(6) **Yards**—A "rear yard" is an open unoccupied space on the same lot with a dwelling, between the extreme rear line of the lot and the extreme rear line of the house. A yard between the front line of the house and the front line of the lot is a "front yard." A yard between the side line of the house and the side line of the lot and which extends from the front line of the lot or front yard to the rear line of the lot or to the rear yard is a "side yard."

(7) **Courts**—A "court" is an open unoccupied space, other than a yard, on the same lot with a dwelling. A court not extending to the street or front or rear yard is an "inner court." A court extending to the street or front or rear yard is an "outer court."

(8) **Corner and interior lots**—A "corner lot" is a lot of which at least two adjacent sides abut for their full length upon a street. A lot other than a corner lot is an "interior lot."

(9) **Front; rear and depth of lot**—The front of a lot is that boundary line which borders on the street. In the case of a corner lot the owner may elect by statement on his plans either street boundary line as the front. The rear of a lot is the side opposite to the front. In the case of a triangular or gore lot the rear is the boundary line not bordering on a street. The depth of a lot is the dimension measured from the front of the lot to the extreme rear line of the lot. In the case of irregular-shaped lots the mean depth shall be taken.

(10) **Public hall**—A "public hall" is a hall, corridor or passageway not within the exclusive control of one family.

(11) **Stair hall**—A "stair hall" is a public hall and includes the stairs, stair landings and those portions of the building through which it is necessary to pass in going between the entrance floor and the roof.

(12) **Basement; cellar, attic**—(a) A "basement" is a story partly underground but having at least one-half of its height above the curb level, and also one-half of its height above the highest level of the adjoining ground. A basement shall be counted as a story, except that a basement, the ceiling of which does not extend for more than five feet above the curb level or above the highest level of the adjoining ground, shall not be counted as a story.

(b) A "cellar" is a story having more than one-half of its height below the curb level, or below the highest level of the adjoining ground. A cellar shall not be counted as a story for the purposes of height measurement. If any part of a story is in that part the equivalent of a basement or cellar, the provisions of this act relative to basements and cellars shall apply to such part of said story.

(c) In the case of private-dwellings and two-family-dwellings an attic or story in a sloping roof shall not be counted as a story, except that no such attic shall contain a kitchen or dining room or be occupied for living purposes as the domicile of a family; the use of such attic shall be confined strictly to the use of the two families occupying the first and second floors of such dwelling. In the case of multiple-dwellings an attic shall be counted as a story.

(13) **Height**—The "height" of a dwelling is the perpendicular distance measured in a straight line from the curb level to the highest point of the roof beams in the case of flat roofs, and to the average of the height of the gable in the case of pitched roofs, the measurements in all cases to be taken through the center of the front of the dwelling. Where a dwelling is situated on a terrace above the curb level such height shall be measured from the level of the adjoining ground. Where a dwelling is on a corner lot and there is

more than one grade or level, the measurements shall be taken through the center of the front on the street having the lowest elevation.

(14) **Curb level**—The "curb level" is the level of the established curb in front of the building measured at the center of such front. Where no curb level has been established the city engineer shall establish such curb level or its equivalent for the purposes of this act.

(15) **Occupied spaces**—Outside stairways, fire escapes, fire towers, porches, platforms, balconies, chimneys and other projections shall be considered as part of the dwelling and not as part of the yards or courts or unoccupied area. When a cornice projects more than two feet into a side yard or court, that portion in excess of two feet shall be considered as a part of the dwelling.

(16) **Fire-proof dwelling**—A "fire-proof dwelling" is one the walls of which are constructed of brick, stone, cement, iron or other hard incombustible material and in which there are no wooden beams or lintels and in which the floors, roofs, stair halls and public halls are built entirely of brick, stone, cement, iron or other hard incombustible material and in which no woodwork or other inflammable material is used in any of the partitions, furrings or ceilings. But this definition shall not be construed as prohibiting elsewhere than in the public halls the use of wooden flooring on top of fire-proof floors or the use of wooden sleepers, doors, windows or trim, nor as prohibiting wooden hand rails or treads of hard wood not less than one and one-half inches thick.

(17) **Wooden building**—A wooden building is a building of which the exterior walls or a portion thereof are of wood. Court walls are exterior walls.

(18) **Nuisance**—The word "nuisance" shall be held to embrace public nuisance as known at common law or in equity jurisprudence; and whatever is dangerous to human life or detrimental to health; whatever dwelling is overcrowded with occupants or is not provided with adequate ingress and egress to or from the same, or is not sufficiently supported, ventilated, sewerage, drained, cleaned or lighted, in reference to its intended or actual use; and whatever renders the air or human food or drink unwholesome, are also severally, in contemplation of this act, nuisances; and all such nuisances are hereby declared illegal.

(19) **Construction of certain words**—The word "shall" is always mandatory and not directory, and denotes that the dwelling shall be maintained in all respects according to the mandate as long as it continues to be a dwelling. Wherever the words "charter," "ordinances," "regulations," "inspector of buildings," "department of health," "building department," "commissioner of health," "department charged with the enforcement of this act," "city attorney," "mayor," "city treasurer," "city council," "fire marshal," or "fire limits," occur in this act they shall be construed as if followed by the words "of the city in which the dwelling is situated." The terms "department of health" and "commissioner of health" as used in this act shall embrace the department and the executive head thereof charged with the duty of enforcing the laws and ordinances relating to public health and sanitation. The terms "building department" and "inspector of buildings" shall embrace the department and the executive head thereof charged with the execution of laws and ordinances relating to the construction of buildings. Wherever the word "occupied" or "used" is employed in this act such word shall be construed as if followed by the words "or is intended, arranged, designed, built, altered, converted to, rented, leased, let or hired out, to be occupied or used." Wherever the words "dwelling," "two family-dwelling," "multiple-dwelling," "building," "house," "premises," or "lot," are used in this act, they shall be construed as if followed by the words, "or any part thereof." Wherever the word "street" is used in this act it shall be construed as including any public alley. "Approved" means approved by the inspector of buildings. All the provisions of this act relative to the size and the opening of windows shall apply equally to storm sash. ('17 c. 137 § 2)

[4755—]3. **Buildings converted or altered**—A building not a dwelling if hereafter converted or altered to such use shall thereupon become subject to all the provisions of this act relative to dwellings hereafter erected. A dwelling of one class if hereafter altered or converted to another class shall thereupon become subject to all the provisions of this act relative to such class. ('17 c. 137 § 3)

[4755—]4. **Alterations and change in occupancy**—No dwelling hereafter erected shall at any time be altered so as to be in violation of any provision of this act, and no dwelling erected prior to the passage of this act shall at any time be altered so as to be in violation of those provisions of this act applicable to such dwelling. If any dwelling or any part thereof is occupied by more families than provided in this act, or is erected, altered or occupied contrary to law, such dwelling shall be deemed an unlawful structure, and the commissioner of health may cause such dwelling to be vacated. And such dwelling shall not again be occupied until it or its occupation, as the case may be, has been made to conform to the law. ('17 c. 137 § 4)

[4755—]5. **Dwellings moved**—If any dwelling be hereafter moved from one lot to another it shall thereupon be made to conform to all the provisions of this act relative to dwellings hereafter erected, except as to size and height of rooms and window area; provided, however, that no room in such dwelling shall be occupied for living purposes unless it shall have a window of an area of not less than eight square feet opening directly upon the street or upon a yard or court of the dimensions specified in this act relative to dwellings hereafter erected. ('17 c. 137 § 5)

[4755—]6. **Minimum requirements—Law not to be modified**—The provisions of this act shall be held to be the minimum requirements adopted for the protection of the health, welfare and safety of the community. The local legislative body of each city is hereby empowered to enact from time to time supplementary ordinances imposing requirements higher than the minimum requirements laid down in this act, relative to light, ventilation, sanitation, fire prevention, egress, occupancy, maintenance and use, for all dwellings. And such local legislative body is hereby further empowered to prescribe for the enforcement of the aforesaid supplementary ordinances, remedies and penalties similar to those prescribed in this act. But no ordinance, regulation, ruling or decision of any municipal body, board, officer or authority shall repeal, amend, modify or dispense with any of the said minimum requirements laid down in this act. Wherever this act requires a greater width of size of yards or courts, or requires a lower height of building, or requires a greater percentage of lot to be left unoccupied, or imposes any other higher standard, than is required in any local ordinance or regulation, the provisions of this act shall govern. Wherever the provisions of any local ordinance or regulation require a greater width or size of yards or courts, or require a lower height of building, or require a greater percentage of lot to be left unoccupied, or impose any other higher standard than is required in this act, such local ordinance or regulation shall govern. ('17 c. 137 § 6)

[4755—]7. **Dwellings damaged**—If a dwelling be damaged by fire or other cause to the extent of not more than two-thirds of its value, exclusive of the value of the foundations, such dwelling in being repaired or rebuilt need not comply with the provisions of this act relative to dwellings hereafter erected. If damaged to the extent of more than two-thirds of such value, it shall not be repaired or rebuilt except in conformity with the provisions of this act relative to dwellings hereafter erected. Where an estimate of damage to buildings is given by the inspector of buildings, an appeal to arbitration shall be allowed to parties believing themselves injured or wronged by the estimate or decision of the inspector of buildings in any such case, as follows:

Any person desiring to make such appeal shall do so within fifteen days after written notice of the decision or order of the inspector of buildings shall have been given him. The request for arbitration shall be in writ-

ing, and shall state the object of the proposed arbitration and the name of the person who is to represent the appellant as arbitrator. The inspector of buildings shall thereupon state to the appellant the cost of such arbitration, and such appellant shall, within twenty-four hours from the time of filing the original request for arbitration, deposit with the inspector of buildings the sum of money required for defraying the expenses of the same, which sum shall in each case be fixed by said inspector in proportion to the difficulty and importance of the case, but shall in no case be more than the cost of similar expert service in the course of ordinary business of private individuals or corporations.

As soon as such sum of money shall have been deposited with him, the inspector of buildings shall appoint an arbitrator to represent the city, who shall, together with the arbitrator appointed by the appellant, if they cannot agree, select a third arbitrator, and the decision of any two of these arbitrators in writing shall, after investigation of the matter in question, be final and binding upon the appellant as well as upon the city.

The arbitrators themselves, before entering upon the discharge of their duties, shall be placed under oath to the effect that they are unprejudiced as to the matter in question and that they will faithfully discharge the duties of their position. They shall have the power to call witnesses who shall be placed under oath, and their decision or award shall be rendered in writing, both to the inspector of buildings and to the appellant.

The fee deposited by the appellant with the inspector of buildings shall be paid by the inspector of buildings to the arbitrators upon the rendering of their report, and shall be in full of all costs incident to the arbitration; but should the decision of said board of arbitration be rendered against the inspector of buildings, then the money deposited by the aforesaid appellant shall be returned to him, and the entire cost of such arbitration shall be paid by the city. Provided, however, that whenever the decision of the inspector of buildings upon the safety of any building or part thereof or appurtenances connected therewith is made in a case so urgent, in his opinion, that failure at once properly to carry out his orders to demolish or strengthen such building or part thereof or to alter or change any of the appurtenances connected therewith may endanger life or limb, the decision of the inspector of buildings shall be absolute and final. ('17 c. 137 § 7)

[4755—]8. **Sewer connection and water supply**—The provisions of this act with reference to sewer connections and water supply shall be deemed to apply only where there is a sewer and water main in the street on which the dwelling is located, and which extend as far as the lot or plot of ground on which the dwelling is situated.

Wherever there is no sewer in the street on which a dwelling is situated but there is a water main, the required plumbing for the dwelling shall be connected to a cesspool at least twenty feet in depth and four feet by four feet in size, provided that the nature of the soil is such, in the opinion of the inspector of buildings, that such cesspool can be made properly to take care of the sewage from said plumbing system. Wherever it is found by said inspector to be impracticable owing to the nature of the soil adjacent to said dwelling to construct such cesspool, a water-proof privy vault or other approved sanitary privy or similar device may be used temporarily for such dwelling until such time as a sewer is provided in the street adjacent to such dwelling. Whenever a sewer is so provided the owner of the dwelling shall at once install a plumbing system in the dwelling and connect it to the sewer. Cesspools shall be placed not less than twenty feet from the building whenever practicable. ('17 c. 137 § 8)

[4755—]9. **Time for compliance**—All improvements specifically required by this act upon dwellings erected prior to the date of its passage shall be made within one year from said date, or at such earlier period as may be fixed by the commissioner of health. ('17 c. 137 § 9)

[4755—]10. **Scope of act**—All the provisions of this act shall apply to all classes of dwellings, except that in sections where specific reference is made to one or more specific classes of dwellings such provisions shall apply only to those specific classes to which such reference is made. All provisions which relate to dwellings shall apply to all classes of dwellings. ('17 c. 137 § 10)

ARTICLE II—DWELLINGS HEREAFTER ERECTED

In this article will be found the provisions which must be observed when a person proposes to build a new dwelling or to convert or alter to such purposes a building which is not a dwelling.

TITLE I

LIGHT AND VENTILATION

[4755—]11. **Percentage of lot occupied**—No dwelling hereafter erected shall occupy, either alone or with other buildings, a greater percentage of the area of the lot than as follows:

(a). In the case of corner lots with streets on three sides, not more than ninety per centum;

(b) In the case of other corner lots, not more than eighty per centum;

(c) In the case of interior lots, not more than sixty-five per centum.

The measurements shall be taken at the ground level except that in the case of multiple-dwellings where there are stores or shops on the entrance story, the measurements may be taken at the top of such entrance story. No measurements of lot area shall include any portion of any street. The measurements of lot area for the purposes of this section may be taken to the middle line of the alley where a public alley immediately abuts the lot at the rear or side and extends across its entire width or length, as the case may be. Any portion of a corner lot distant more than eighty feet from the outside side line of the lot, or from said side line extended in the same direction, shall be treated as an interior lot. The provisions of this section shall not apply to hotels. ('17 c. 137 § 20)

[4755—]12. **Height**—No dwelling hereafter erected shall exceed in height the width of the widest street upon which it abuts nor in any case shall it exceed six stories and basement nor seventy-five feet in height. Such width of street shall be measured from front lot line where a street borders a public place, public park or navigable body of water, the width of the street is the mean width of such street plus the width, measured at right angles to the street line, of such public place, public park or body of water to opposite front lot line. No dwelling shall hereafter be erected upon any street or alley less than thirty feet in width. The provisions of this section shall not apply to hotels. ('17 c. 137 § 21)

[4755—]13. **Rear yards**—Immediately behind every dwelling hereafter erected there shall be a rear yard extending across the entire width of the lot. Such yard shall be at every point open and unobstructed from the ground to the sky. Every part of such yard shall be directly accessible from every other part thereof. The depth of said yard shall be measured at right angles from the extreme rear part of the dwelling.

(a) to the middle line of the alley, where a public alley immediately abuts the lot and extends across its entire width;

(b) to the rear lot line where there is no such alley;

(c) to the nearest wall of the building where there is another building at the rear as permitted in section twenty-eight of this act.

The depth of such rear yard shall increase proportionately with an increased height of the dwelling and shall be proportionate to the depth of the lot. If the dwelling is three stories high the depth of the rear yard shall be twenty-five per centum of the depth of the lot; if the dwelling is four stories high such depth of rear yard shall be thirty per centum of the depth of the lot; if the dwelling is five stories high such depth of rear yard shall be thirty-five per centum of the depth of the lot; and shall increase

five per centum for each story. If the dwelling is less than three stories in height, the depths above prescribed may be decreased five per centum for each story below three stories. Irrespective of the above provisions, no rear yard under any circumstances shall ever be less than fifteen per centum of the depth of the lot nor less than fifteen feet in depth, except that when a private-dwelling or a two-family-dwelling is located on the rear of a corner lot not less than fifty feet in width, and such dwelling faces upon the side street, the rear yard for such dwelling may be not less than five feet in depth. A front yard may be any depth. Any portion of a corner lot distant more than eighty feet from the outside side line of the lot, or from said side line extended in the same direction, shall be treated as an interior lot. This section shall not apply to hotels.

Except that in the case of multiple-dwellings of Class A hereafter erected known as "kitchenettes" in which the apartments are arranged in suites of not more than three rooms, kitchen and bath, and in which central heating and janitor service is furnished by the owner, the rear yard may be twenty-two and one-half feet in depth irrespective of the depth of the lot for a three-story dwelling and such depth shall increase three feet for each additional story above three stories, but shall never be less than twenty-two and one-half feet. ('17 c. 137 § 22)

[4755—]14. Side yards—Distance between adjoining buildings—In order to ensure adequate light and ventilation and reduce the conflagration hazard and preserve the amenities of residential districts, no dwelling hereafter erected shall approach nearer to a side lot line than as prescribed in this section. The space between any such dwelling and the side lot line shall be deemed a side yard and shall be as follows:

(a) In the case of a dwelling hereafter erected one story in height such space shall be not less than four feet from the side wall of said dwelling to the side lot line.

(b) In the case of a dwelling hereafter erected two stories in height such space shall be not less than five feet to the side lot line; if said dwelling is three stories in height, such space shall be not less than seven feet to the side lot line; and such space shall increase two feet in width for each additional story.

(c) In the case of private-dwellings and of two-family-dwellings hereafter erected, such space shall be not less than three feet from the side wall of the dwelling to the side lot line. Provided, however, that in no case shall the combined width of side yards for any such dwelling be less than double the width as prescribed in sub-division (a) and (b) of this section for a building of like height.

(d) All of the above-mentioned side yards shall be at every point open and unobstructed from the ground to the sky, except as provided in sub-division fifteen of section two [4755—2] of this act. Provided, however, that in the case of multiple-dwellings where the entrance story is used exclusively for business purposes the measurements may be taken at the top of such entrance story.

The width of said side yard may be measured to the middle line of the street or public alley, where a street or public alley immediately abuts the lot and extends along its entire length. The above requirements for side yards shall not apply to hotels hereafter erected outside of residential districts. If, however, side yards are left for such hotels, they shall conform to the requirements of this section. ('17 c. 137 § 23)

[4755—]15. Courts—The sizes of all courts for dwellings hereafter erected shall be proportionate to the height of the dwelling. No court shall be less in any part than the minimum sizes prescribed in this section. The minimum width of a one-story court for a dwelling shall be ten feet, of a two-story court twelve feet, and of a three-story court fourteen feet, and shall increase two feet for each additional story above three stories. Except that in the case of hotels such increase shall be one foot for each additional story above three stories. The area of an inner court shall never be less than twice the square of the minimum width prescribed by this section.

The length of an outer court except in the case of a side yard, shall never be greater than four times its width. The width of all courts adjoining the lot line shall be measured to the lot line and not to an opposite building. ('17 c. 137 § 24)

[4755—]16. **Courts open at top**—No court of a dwelling hereafter erected shall be covered by a roof or skylight. Every such court shall be at every point open and unobstructed from the ground to the sky. Except that in the case of multiple-dwellings where there are stores or shops on the entrance story, the courts may start at the top of such entrance story and such courts may be roofed over by a skylight provided the skylight completely covers the court and is equipped with ventilators having a minimum opening equivalent to forty-four square inches for each story in the height of said court and also with fixed louvres having a minimum opening equal to the superficial area of said court, and such openings into said court shall be kept open and unobstructed at all times. The provisions of this section as to courts starting from the ground shall not apply to hotels. ('17 c. 137 § 25)

[4755—]17. **Air-intakes**—In all dwellings hereafter erected every inner court shall be provided with one or more horizontal air-intakes at the bottom. One such air-intake shall always communicate directly with the street or front yard or rear yard, and each shall consist of a passage-way not less than three feet wide and seven feet high which shall be kept open, or be provided with an open-work gate at either end and such gate shall be so constructed as to be readily opened from the inside. ('17 c. 137 § 26)

[4755—]18. **Angles in courts**—Nothing contained in the foregoing sections concerning courts shall be construed as preventing the cutting off of the corners of said courts, provided that the running length of the wall across the angle of such corner does not exceed seven feet. ('17 c. 137 § 27)

[4755—]19. **Buildings on same lot with a dwelling**—If any building is hereafter placed upon the same lot with a dwelling there shall always be maintained between the said buildings an open unoccupied space extending upward from the ground. If such buildings are placed at the side of each other the space between them shall conform to the provisions of section twenty-three of this act relating to side yards but such space shall be twice the minimum required in subdivision (a) and (b) of said section. If such buildings are placed one at the rear of the other the space between them shall be the same as that prescribed in section twenty-two for rear yards. In all cases the height of the highest building on the lot shall regulate the dimensions. No building of any kind shall be hereafter placed upon the same lot with a dwelling so as to decrease the minimum sizes of courts or yards as hereinbefore prescribed. No building shall hereafter be placed upon a lot so that there shall be a dwelling at the rear of another building on the same lot. Except that a private garage or private stable may be built at the rear of a lot on which there is a dwelling at the front. Such garage or stable shall not exceed two stories in height, and may have living rooms therein for the use solely of a household employé, or member of his family, of the occupant of the dwelling on the front of the lot. If so completed the garage or stable shall be fire-proof and the rooms so occupied in addition to complying with the provisions of this act shall have an entrance from the outside of the building without passing through the garage or stable. If any dwelling is hereafter erected upon any lot upon which there is already another building, it shall comply with the provisions of this act, and in addition the space between the said building and the said dwelling shall be of such size and arranged in such manner as is prescribed in this section, the height of the highest building on the lot to regulate the dimensions. ('17 c. 137 § 28)

[4755—]20. **Rooms, lighting and ventilation of**—In every dwelling hereafter erected every room shall have at least one window opening directly upon the street, or upon a yard or court of the dimensions specified in this article and located on the same lot, and such window shall be so located as

properly to light all portions of such room. This provision shall not, however, apply to rooms used as art galleries, swimming pools, gymnasiums, squash courts, or for similar purposes, provided such rooms are adequately lighted and ventilated. In multiple-dwellings of Class A hereafter erected there shall be no apartment, suite or group of rooms which does not contain at least one room opening directly upon the street, or upon a rear yard, side yard or outer court of the dimensions specified in this article and located on the same lot. Except that in hotels the provisions of this section shall apply only to rooms used for sleeping purposes. ('17 c. 137 § 29)

[4755—]21. Windows in rooms—In every dwelling hereafter erected the total window area in each room shall be at least one-eighth of the superficial floor area of the room and the whole window shall be made so as to open in all its parts. At least one such window shall be not less than twelve square feet in area between stop beads. In multiple-dwellings the top of at least one window shall be not less than seven feet above the floor. Provided, however, that where an open porch adjoins a room, one-half of the windows opening upon such porch may be considered as part of the total window area required for such room. ('17 c. 137 § 30)

[4755—]22. Rooms, size of—In every dwelling hereafter erected all rooms, except water-closet compartments and bath-rooms, shall be of the following minimum sizes:

(a) In multiple-dwellings of Class B every room shall contain at least seventy square feet of floor area.

(b) In two-family-dwellings and in multiple-dwellings of Class A every room shall contain at least one hundred square feet of floor area.

No room shall be in any part less than seven feet wide. The foregoing provisions shall not apply to one kitchenette in each apartment, suite or group of rooms in multiple-dwellings of Class A, provided such kitchenette contains not less than thirty-six square feet of floor area and is provided with a window as required by sections twenty-nine and thirty of this act, but such window need not contain more than six square feet of glass area between stop beads; nor to one sun-parlor or sleeping-porch in each apartment, group or suite containing more than three rooms, provided such sun-parlor or sleeping-porch contains not less than eighty square feet of floor area, is provided on two sides with a window opening as required by sections twenty-nine and thirty of this act and has a total window area between stop-beads of not less than one-half of the floor area of such sun-parlor or sleeping-porch.

In every private-dwelling hereafter erected there shall be at least one room containing not less than one hundred and twenty square feet of floor area. In every two-family-dwelling and in every multiple-dwelling of Class A hereafter erected, in each apartment, suite or group of rooms there shall be at least one room containing not less than one hundred and fifty square feet of floor area. ('17 c. 137 § 31)

[4755—]23. Rooms, height of—No room in a dwelling hereafter erected shall be in any part less than the following heights, from the finished floor to the finished ceiling:

(a) In private-dwellings eight feet high throughout ninety per centum of the area of the room.

(b) In two-family-dwellings eight feet high throughout ninety per centum of the area of the room.

(c) In multiple-dwellings eight feet six inches high throughout the entire area of the room. Except that an attic room in a private-dwelling or two-family-dwelling need be seven feet six inches in height in but one-half of its area, provided there are not less than seven hundred and fifty cubic feet of air space within said room. ('17 c. 137 § 32)

[4755—]24. Alcoves and alcove rooms—In a dwelling hereafter erected an alcove in any room shall be separately lighted and ventilated as provided for rooms in the foregoing sections. Such alcove shall not contain a floor area less than is required for rooms in section 31 of this act [4755—22]. No part of any room in a dwelling hereafter erected shall be enclosed or subdi-

vided at any time, wholly or in part, by a curtain, portiere, fixed or movable partition or other contrivance or device, unless such part of the room so enclosed or subdivided shall contain a separate window as herein required and shall have a floor area not less than that required in section 31 of this act. [4755—22]. ('17 c. 137 § 33)

[4755—]25. **Privacy**—In every dwelling hereafter erected, access to every living room and to every bedroom and to at least one water-closet compartment shall be had without passing through a bedroom. ('17 c. 137 § 34)

[4755—]26. **Water-closet compartments and bath-rooms, lighting and ventilation of**—In every dwelling hereafter erected every water-closet compartment and bath-room shall have at least one window opening directly upon the street, or upon a yard or court of the dimensions specified in this article and located on the same lot. In all dwellings hereafter erected the aggregate area of windows for each water-closet compartment shall be not less than six square feet between stop beads, and in multiple-dwellings hereafter erected one at least of such windows shall be not less in size than three square feet between stop beads. Such windows shall be so located as properly to light all portions of such compartment. The foregoing provisions of this section shall not apply to any water-closet compartment or bath-room in a hotel which is equipped with a proper mechanical ventilating system so installed as to provide four complete changes of air per hour in each such compartment and bath-room. Such ventilating system shall be maintained in constant operation. Every such window shall be made so as to open in all its parts. Nothing in this section contained shall be construed so as to prohibit a general toilet room containing several water-closet compartments separated from each other by dwarf partitions, provided such toilet room is adequately lighted and ventilated to the outer air as above provided, and that such water-closets are supplemental to the water-closet accommodations required by the provisions of section 50 of this act [4755—36]. In hotels hereafter erected in the case of water-closets located on the top floor or at the bottom of a court, a ventilating skylight opening to the sky may be used in lieu of the windows required by this section. ('17 c. 137 § 35)

[4755—]27. **Windows in public halls**—In every two-family-dwelling and multiple-dwelling hereafter erected every public hall shall have at each story at least one window opening directly upon the street or upon a yard or court of the dimensions specified in this article and located on the same lot. Such windows shall be at the end of said hall with the natural direction of the light parallel to the hall's axis. In lieu of the requirement for one window at the end of each hall, there may be windows located at the side of such hall, provided there shall be at least one such window in every twenty feet of length or fraction thereof of said hall; and each such window shall open directly upon the street or upon a yard or court of the dimensions specified in this article and located on the same lot. The above requirement shall not apply to that portion of the entrance hall between the entrance and the nearest flight of stairs provided the entrance door contains not less than ten square feet of glass area. Any part of a public hall which is offset or recessed more than three feet or shut off from any other part of said hall shall be deemed a separate hall within the meaning of this section and shall be separately lighted and ventilated. Except that in hotels a recessed hall need have no window at its end with the natural direction of the light parallel with the hall's axis, but such hall shall have a window so located as to afford proper ventilation for said hall. ('17 c. 137 § 36)

[4755—]28. **Windows and skylights for public halls**—In two-family-dwellings and multiple-dwellings hereafter erected at least one of the windows provided to light each public hall or part thereof shall be at least two feet six inches wide and five feet high measured between stop beads. In every multiple-dwelling hereafter erected there shall be in the roof directly over each stair well a ventilating skylight provided with ventilators having a minimum opening of forty square inches, or such skylight shall be provided with fixed or movable louvres. ('17 c. 137 § 37)

[4755—]29. Windows for stair halls, size of—In every multiple-dwelling hereafter erected there shall be provided at each story, or at the stair landing part way between stories, at least one window to light and ventilate each stair hall which window shall be at least two feet six inches wide and five feet high measured between stop beads. A sash door shall be deemed the equivalent of a window in this and the foregoing sections, provided that such door contains the amount of glass surface prescribed for such windows. The provisions of this section shall not apply to hotels. ('17 c. 137 § 38)

[4755—]30. Outside porches—In all dwellings hereafter erected roofed-over outside porches shall not be erected outside of and adjoining windows required by this act for the lighting or ventilation of rooms except as provided in section 30 of this act [4755—21]; they may, however, open from windows supplementary to those required by law, provided they do not diminish the legal light or ventilation of such rooms. The term "outside porches" shall include outside platforms, balconies and stairways. All such outside porches shall be considered as part of the building and not as part of the yards or courts or other unoccupied area. ('17 c. 137 § 39)

TITLE 2

SANITATION

[4755—]31. Cellar rooms—In dwellings hereafter erected no room in the cellar shall be occupied for living purposes. ('17 c. 137 § 45)

[4755—]32. Basement rooms—In dwellings hereafter erected no room in the basement shall be occupied for living purposes, except by the janitor of such dwelling and the members of his family. In addition to the other requirements of this act, such rooms shall have sufficient light and ventilation, shall be well drained and dry and shall be fit for human habitation. ('17 c. 137 § 46)

[4755—]33. Cellars, water-proofing and lighting—Every dwelling hereafter erected shall have a basement, cellar or excavated space under the entire entrance floor, at least three feet in depth, or shall be elevated above the ground so that there will be a clear air-space of at least twenty-four inches between the top of the ground and the bottom of said floor so as to insure ventilation and protection from dampness. Such space shall in all cases be enclosed but provided with ample ventilation and properly drained.

When necessary to prevent dampness the inspector of buildings may require that all walls below the ground level and the cellar or lowest floor be made damp-proof and water-proof. When necessary to make such walls or floors damp-proof and water-proof, such damp-proofing and water-proofing shall conform to the requirements of the inspector of buildings, shall be applied to all outside walls and up the same as high as the ground level, and shall be continued throughout the floor, and the said cellar or lowest floor shall be so constructed as to prevent dampness or water from entering. All cellars and basements in dwellings hereafter erected shall be properly lighted and ventilated.

In every dwelling hereafter erected when the foundation, basement, or cellar walls are of poured concrete construction, forms shall be built on each side of such foundations or walls from the base to the top in order to insure uniform width. ('17 c. 137 § 47)

[4755—]34. Courts, areas and yards—In every dwelling hereafter erected all courts, areas and yards shall be so graded and drained that all water may drain freely into a sewer or street. When required by the commissioner of health, such courts, areas or yards shall be concreted in whole or in part as he may direct. ('17 c. 137 § 48)

[4755—]35. Water supply—In every dwelling hereafter erected, when water mains are accessible as specified in section 8 of this act, there shall be a proper sink or wash-bowl with running water, exclusive of any sink in the cellar. In two-family-dwellings and in multiple-dwellings of Class A there shall be such a sink or wash-bowl in each apartment, suite or group of rooms.

The installation of such sink or wash-bowl with running water may be waived by the commissioner of health so long and so long only as the house is not occupied except by its owner and his family. ('17 c. 137 § 49)

[4755—]36. **Water-closet accommodations**—In every dwelling hereafter erected, except as provided in section 8 of this act [4755—8], there shall be a separate water-closet. Each such water-closet shall be placed in a compartment completely separated from every other water-closet; such compartment shall be not less than three feet wide, and shall be enclosed with partitions which shall extend to the ceiling and which shall not be of wood construction. Every such compartment shall have a window opening directly upon the street or upon a yard or court of the minimum sizes prescribed by this act and located upon the same lot. Nothing in this section contained shall be construed so as to prohibit a general toilet room containing several water-closet compartments separated from each other by dwarf partitions, provided such toilet room is adequately lighted and ventilated to the outer air as above provided, and that such water-closets are supplemental to the water-closet accommodations required by other provisions of this section for the tenants of the said dwelling. No water-closet shall be placed out of doors. No water-closet shall be placed in a cellar without a written permit from the inspector of buildings. In two-family dwellings and in multiple-dwellings of Class A hereafter erected there shall be for each family a separate water-closet constructed and arranged as above provided and located within each apartment, suite or group of rooms. In multiple-dwellings of Class B hereafter erected there shall be provided at least one water-closet for every twenty occupants or fraction thereof. Every water-closet compartment hereafter placed in any dwelling shall be provided with proper means of lighting the same at night. In multiple-dwellings hereafter erected the floor of every water-closet compartment shall be made water-proof with asphalt, tile, stone, terrazzo or some other nonabsorbent water-proof material. ('17 c. 137 § 50)

[4755—]37. **Urinals**—The floor of every urinal compartment shall be made water-proof with asphalt, tile, stone, terrazzo or some other non-absorbent water-proof material; and such water-proof material shall extend at least three feet above the floor so that the said floor can be washed or flushed out without leaking. ('17 c. 137 § 51)

[4755—]38. **Sewer connection**—No multiple-dwelling shall hereafter be erected on any street unless there is city water supply accessible thereto nor unless there is a public sewer in such street, or a private sewer connecting directly with a public sewer, and every such multiple-dwelling shall have its plumbing system connected with the city water supply and with a public sewer before such multiple-dwelling is occupied. No cesspool or vault or similar means of sewage disposal shall be used in connection with any dwelling where connection with a public sewer is practicable. ('17 c. 137 § 52)

[4755—]39. **Plumbing**—In every dwelling hereafter erected no plumbing fixture shall be enclosed with woodwork but the space underneath shall be left entirely open. All plumbing work shall be sanitary in every particular. All fixtures shall be trapped. Pan, plunger, and long hopper closets shall not be permitted. Wooden sinks and wooden wash-trays shall not be permitted. Tile or earthenware house drains shall not be permitted. In all multiple-dwellings hereafter erected where plumbing or other pipes pass through floors or partitions, the openings around such pipes shall be sealed or made tight with incombustible material, so as to prevent the spread of fire from one floor to another or from room to room. ('17 c. 137 § 53)

TITLE 3

FIRE PROTECTION

[4755—]40. **Fireproof dwelling, when required**—No dwelling shall hereafter be erected exceeding three stories in height, unless it shall be a fireproof dwelling; the building, however, may step up to follow the grade, provided no part of it is over three stories in height. ('17 c. 137 § 60)

[4755—]41. **Means of egress**—Every multiple-dwelling hereafter erected exceeding one story in height shall have at least two independent ways of egress which shall be located remote from each other, and shall extend from the entrance floor to the top floor, and in the case of flat-roofed multiple-dwellings exceeding two stories in height shall extend to the roof. The stairs and public halls therein shall each be at least three feet six inches wide in the clear. The two ways of egress shall be flights of stairs, either inside or outside, constructed and arranged as provided in sections 64 [4755—44] and 65 [4755—45] of this act. In multiple-dwellings of Class A, except in kitchenette apartments arranged in suites of not more than three rooms, kitchen and bath, the second way of egress shall be directly accessible to each apartment, group or suite of rooms without having to pass through the first way of egress. In multiple-dwellings of Class B and in kitchenette apartments, as above described, the second way of egress shall be directly accessible from a public hall. ('17 c. 137 § 61)

[4755—]42. **Fire-escapes**—All fire-escapes hereafter erected on multiple-dwellings shall be located and constructed as in this section required. Such fire-escapes shall be located at each story the floor of which is ten or more feet above the ground. Access to fire-escapes shall not be obstructed in any way. No fire-escapes shall be placed in an inner court. Fire-escapes may project into the public highway to a distance not greater than six feet beyond the building line. All fire-escapes shall consist of outside open iron, stone or concrete balconies and stairways. All balconies shall be not less than three feet in width. All stairways shall be placed at an angle of not more than forty-five degrees to the horizontal wherever practicable and in no case to exceed fifty degrees to the horizontal, with flat open steps not less than seven inches in width and twenty-four inches in length and with a rise of not more than eight inches. The openings for stairways in all balconies shall be not less than twenty-four by seventy inches, and shall have no covers of any kind. The balcony on the top floor, except in the case of a balcony on the street or in the case of a peaked-roofed house, shall be provided with a stairs or with a goose-neck ladder leading from said balcony to and above the roof and properly fastened thereto. A drop or stationary ladder or stairs shall be provided from the lowest balcony of sufficient length to reach a safe landing place beneath. All fire-escapes shall be constructed and erected to sustain safely in all their parts a live load of one hundred and twenty pounds to the superficial foot, and if of iron shall receive not less than two coats of good paint, one in the shop and one after erection. ('17 c. 137 § 62)

[4755—]43. **Roof egress; scuttles and bulkheads**—Every flat-roofed multiple-dwelling hereafter erected exceeding one story in height or occupied by more than two families on any floor, shall have in the roof a bulkhead or scuttle not less than two feet by three feet in size. Such scuttle or bulkhead shall be fire-proof or covered with metal on the outside. Every flat-roofed multiple-dwelling hereafter erected exceeding two stories in height shall be provided with stairs leading to such scuttle or bulkhead and easily accessible to all occupants of the building. Every two-story flat-roofed multiple-dwelling hereafter erected having two or more families on any floor shall be provided with stairs or stationary ladder leading to such scuttle or bulkhead and easily accessible to all occupants of the building. No scuttle or bulkhead shall be located in a closet or room, but shall be located in the ceiling of the public hall on the top floor, and access through the same shall be direct and unobstructed. ('17 c. 137 § 63)

[4755—]44. **Stairs**—In multiple-dwellings hereafter erected all stairs shall be constructed with a rise of not more than eight inches and with treads not less than ten inches wide and not less than three feet six inches long in the clear, except that multiple-dwellings not exceeding two stories in height or having not more than two families on any floor, may have stairs with treads not less than three feet long in the clear. Winding stairs shall not be used. In multiple-dwellings hereafter erected exceeding two stories in height or occupied by more than two families on any floor, one of the stairways shall be

constructed of fireproof material throughout. The risers, strings and balusters shall be of metal, concrete or stone. The treads shall be of metal, slate, concrete or stone, or of hard wood not less than one and one-half inches thick. Wooden hand-rails to stairs may be used if constructed of hard wood. ('17 c. 137 § 64)

[4755—]45. **Stair halls**—In multiple-dwellings hereafter erected exceeding two stories in height or occupied by more than two families on any floor, the fire-proof stairs required by the preceding section shall be enclosed on all sides with walls of brick not less than eight inches thick. The floors and ceilings of such fire-proof stair halls shall be of fire-proof construction. No wooden flooring shall be used. The doors opening from such stair halls shall be fire-proof, self-closing and shall open outward. There shall be no transom or sash or similar opening from such stair hall to any other part of the dwelling, except that such stair hall shall be shut off from all non-fire-proof portions of the public halls and from all other non-fire-proof parts of the building on each story by a self-closing fire-proof sash door with transparent wire-glass therein; on either side and above such door there may be fixed fire-proof transoms and sash with transparent wire-glass therein. ('17 c. 137 § 65)

[4755—]46. **Entrance halls**—Every entrance hall in a multiple-dwelling hereafter erected shall be at least five feet six inches wide in the clear, and shall comply with all the conditions of the preceding sections as to the construction of stair halls. In every multiple-dwelling hereafter erected, access shall be had from the street or alley to the rear yard either in a direct line or through a court or side yard. ('17 c. 137 § 66)

[4755—]47. **Dumb-waiters, elevators and shafts**—In multiple-dwellings hereafter erected all vertical shafts, whether for dumb-waiter, elevator or other purposes, shall be constructed of fire-proof material, with fire-proof doors at all openings at each story, including the cellar. In the case of dumb-waiters such doors shall be self-closing. No elevator shall be permitted in the well-hole of stairs, but every elevator shall be completely separated from the stairs by fire-proof walls enclosing the same. ('17 c. 137 § 67)

[4755—]48. **Cellar stairs**—In multiple-dwellings of Class A hereafter erected which exceed two stories in height or which are occupied by more than two families on any floor, all inside stairs communicating between the cellar or basement, and the floor next above shall be of fire-proof construction with self-closing fire-proof door at the top and bottom and shall be enclosed with brick walls not less than eight inches thick; if located underneath the stairs leading to the upper stories, the soffit of such stairs shall be covered with fire-proof material. ('17 c. 137 § 68)

[4755—]49. **Closet under first story stairs**—In multiple-dwellings erected no closet of any kind shall be constructed under any staircase leading from the entrance story to the upper stories, but such space shall be left entirely open and kept clear and free from encumbrance. ('17 c. 137 § 69)

[4755—]50. **Cellar entrance**—In every multiple-dwelling hereafter erected there shall be an entrance to the cellar or other lowest story from the outside of the said building. ('17 c. 137 § 70)

[4755—]51. **Wooden multiple-dwellings**—No wooden dwelling to be occupied by more than one family shall hereafter be erected exceeding two stories and attic in height. ('17 c. 137 § 71)

[4755—]52. **Fire walls**—In a multiple-dwelling hereafter erected where such multiple-dwelling is completely divided into two or more parts by continuous fire walls and where such fire walls extend from the ground to a distance of two feet at all points above the roof of the building, and without any opening therein, each such part may be considered as a separate dwelling for the purposes of fire protection. Wooden dwellings shall not be built contiguous to each other, and no such dwelling shall hereafter approach nearer to another building than provided in section twenty-three of this act. In non-fire-proof multiple-dwellings hereafter erected, each five thousand superficial

feet in ground area covered by such multiple-dwelling shall be separated from the rest of such multiple-dwelling by fire-proof division walls. Such walls shall extend from the ground to a height of two feet above the roof. Standard fire-proof self-closing doors or fire-proof curtains may be installed in such fire-proof division walls. ('17 c. 137 § 72)

[4755—]53. **Outside stand pipes not required**—Outside pipes shall not be required on buildings not exceeding three stories in height. ('17 c. 137 § 73)

ARTICLE III—ALTERATIONS

In this article will be found the provisions which must be observed when a person proposes to alter an existing dwelling.

[4755—]54. **Percentage of lot occupied**—No dwelling shall hereafter be enlarged or its lot be diminished, or other building placed on its lot, so that a greater percentage of the lot shall be occupied by buildings or structures than provided in section 20 of this act [4755—11]. ('17 c. 137 § 75)

[4755—]55. **Height**—No dwelling shall be increased in height so that the said dwelling shall exceed the height prescribed in section 21 of this act [4755—12]. ('17 c. 137 § 76)

[4755—]56. **Yards**—No dwelling shall hereafter be enlarged or its lot be diminished, or other building placed on the lot, so that the rear yard or side yard shall be less in size than the minimum sizes prescribed in sections 22 and 23 of this act [4755—13 and 4755—14] for dwellings hereafter erected. ('17 c. 137 § 77)

[4755—]57. **New courts in existing dwellings**—Any court hereafter constructed in a dwelling erected prior to the passage of this act used to light or ventilate rooms or water-closet compartments shall be not less than six feet in its least dimension in any part nor contain less than sixty-four square feet of superficial area, and such court shall under no circumstances be roofed or covered over with a roof or skylight; every such court, if an inner court, shall be provided at the bottom with one or more horizontal air-intakes constructed and arranged as provided in section 26 of this act [4755—17]. Where it is not practicable to construct such passage-way a metal duct not less in area than three hundred square inches nor less in its least dimension than twelve inches may be used. ('17 c. 137 § 78)

[4755—]58. **Additional rooms and halls**—Any additional room or hall that is hereafter constructed or created in a dwelling shall comply in all respects with the provisions of article 2 of this act [4755—2], except that it may be of the same height as the other rooms on the same story of the dwelling. ('17 c. 137 § 79)

[4755—]59. **Rooms and halls, lighting and ventilation of**—No dwelling shall be so altered or its lot diminished that any room or public hall or stairs shall have its light or ventilation diminished in any way not approved by the inspector of buildings. ('17 c. 137 § 80)

[4755—]60. **Alcoves and alcove rooms**—No part of any room in any dwelling shall hereafter be enclosed or subdivided, wholly or in part, by a curtain, portiere, fixed or movable partition or other contrivance or device, unless such part of the room so enclosed or subdivided shall contain a window as required by sections 29, 30, and '35 of this act [4755—20, 4755—21, and 4755—26] and have a floor area as provided in section 31 of this act [4755—22]. ('17 c. 137 § 81)

[4755—]61. **Skylights**—All new skylights hereafter placed in a multiple-dwelling shall be provided with ventilators having a minimum opening of forty square inches and also with either fixed or movable louvres or with movable sash having a minimum opening of forty square inches, and shall be of such size as may be determined to be practicable by the inspector of buildings. ('17 c. 137 § 82)

[4755—]62. **Water-closet accommodations**—Every water-closet hereafter placed in a dwelling, except one provided to replace a defective or antiquated fixture in the same location, shall comply with the provisions of sections 35, 50, 51 and 53 of this act [4755—26, 4755—36, 4755—37, and 4755—39] relative to water-closets in dwellings hereafter erected, except that in the case of a new water-closet installed on the top floor of an existing dwelling, a ventilating skylight open to the sky may be used in lieu of the windows required by section 35 of this act [4755—26]. ('17 c. 137 § 83)

[4755—]63. **Fire-proof dwellings**—No dwelling shall hereafter be altered so as to exceed three stories in height unless it shall be a fire-proof dwelling. ('17 c. 137 § 84)

[4755—]64. **Fire-escapes**—All fire-escapes hereafter constructed on any multiple-dwelling shall be located and constructed as prescribed in section 62 of this act [4755—42]. ('17 c. 137 § 85)

[4755—]65. **Roof stairs**—No stairs leading to the roof in any multiple-dwelling shall be removed or be replaced by a ladder. ('17 c. 137 § 86)

[4755—]66. **Bulkheads and penthouses**—Every bulkhead and penthouse hereafter constructed in a multiple-dwelling shall be constructed fire-proof or covered with metal on the outside. ('17 c. 137 § 87)

[4755—]67. **Stairways**—No public hall or stairs in a multiple-dwelling shall be reduced in width so as to be less than the minimum width prescribed in sections 61 and 66 of this act [4755—41 and 4755—46]. ('17 c. 137 § 88)

[4755—]68. **Dumb-waiters, elevators and shafts**—All vertical shafts, dumb-waiters and elevators hereafter constructed in multiple-dwellings shall comply in all respects with the provisions of section 67 of this act [4755—47]. ('17 c. 137 § 89)

[4755—]69. **Alteration of existing wooden multiple-dwellings**—Except as otherwise provided in this article, no existing wooden multiple-dwelling shall hereafter be enlarged, extended or raised unless the alterations thereto comply with the provisions of this act for the erection of new dwellings. ('17 c. 137 § 90)

[4755—]70. **Wooden buildings on same lot with a multiple-dwelling**—No wooden building of any kind whatsoever shall hereafter be placed or built upon the same lot with a multiple-dwelling within the fire limits, and no existing wooden structure or other building on the same lot with a multiple-dwelling within the fire limits shall hereafter be enlarged, extended or raised. ('17 c. 137 § 91)

ARTICLE IV—MAINTENANCE

In this article will be found the provisions which an owner must observe with regard to the maintenance of a dwelling.

[4755—]71. **Public halls, lighting in the daytime**—In every multiple-dwelling exceeding two stories in height, where the public halls and stairs are not sufficiently lighted to permit a person to read ten point type in every part thereof without the aid of artificial light, the owner of such dwelling shall keep a proper light burning in the hallway upon each floor, as may be necessary from sunrise to sunset. ('17 c. 137 § 95)

[4755—]72. **Public halls, lighting at night**—In every multiple-dwelling exceeding two stories in height or occupied by more than four families, a proper light shall be kept burning by the owner in the public hallways near the stairs upon each floor, every night from sunset to sunrise. In two-story multiple-dwellings containing not more than four families, each family shall be provided with a proper outlet and fixture for a light in the public hall. ('17 c. 137 § 96)

[4755—]73. **Water-closets in cellars**—No water-closet shall be maintained in the cellar of any dwelling without a permit in writing from the commis-

sioner of health, who shall have power to make rules and regulations governing the maintenance of such closets. Under no circumstances shall the general water-closet accommodations of any multiple-dwelling be permitted in the cellar or basement thereof; this provision, however, shall not be construed so as to prohibit a general toilet room containing several water-closets, provided such water-closets are supplementary to those required by law. ('17 c. 137 § 97)

[4755—]74. **Water-closet accommodations**—In every dwelling existing prior to the passage of this act there shall be provided at least one water-closet for every two apartments, groups or suites of rooms, or fraction thereof, except that in multiple-dwellings of Class B there shall be provided at least one water-closet for every twenty occupants or fraction thereof. This section shall be subject to the provisions of section 8 of this act [4755—8]. ('17 c. 137 § 98)

[4755—]75. **Basement and cellar rooms**—No room in the cellar of any dwelling erected prior to the passage of this act shall be occupied either for living or for sleeping purposes. No room in the basement of any such dwelling shall be so occupied without a written permit from the commissioner of health. No such room shall hereafter be occupied unless all the following conditions are complied with:

(1) Such room shall be at least seven feet high in every part from the finished floor to the finished ceiling.

(2) The ceiling of such room shall be in every part at least three feet six inches above the surface of the street or ground outside of or adjoining the same.

(3) There shall be appurtenant to such room the use of a water-closet.

(4) The lowest floor shall be water-proof and damp-proof.

(5) Such room shall have sufficient light and ventilation, shall be well drained and dry, and shall be fit for human habitation. ('17 c. 137 § 99)

[4755—]76. **Water-closets and sinks**—In all dwellings the floor or other surface beneath and around water-closets and sinks shall be maintained in good order and repair. ('17 c. 137 § 100)

[4755—]77. **Repairs**—Every dwelling and all the parts thereof shall be kept in good repair, and the roof shall be kept so as not to leak, and all rain water shall be so drained and conveyed therefrom as not to cause dampness in the walls or ceilings. ('17 c. 137 § 101)

[4755—]78. **Water supply**—Every dwelling where water supply is accessible, shall, subject to the provisions of section 8 of this act [4755—8], have within the dwelling at least one proper sink with running water furnished in sufficient quantity at one or more places exclusive of the cellar. In two-family dwellings and multiple-dwellings of Class A there shall be at least one such sink for each family located within the apartment occupied by said family. ('17 c. 137 § 102)

[4755—]79. **Cisterns and wells**—Where there is no city water supply accessible, there shall be provided one or more adequate cisterns or wells with a pump. Such cisterns or wells shall be of such size and number and constructed and maintained in such manner as may be determined by the commissioner of health. The above requirements shall be subject to the provisions of section 8 of this act [4755—8]. ('17 c. 137 § 103)

[4755—]80. **Catch-basins**—In the case of dwellings where, because of lack of city water supply or sewers, sinks with running water are not provided inside the dwellings, one or more catch basins properly connected with a cesspool for the disposal of waste water, as may be necessary in the opinion of the commissioner of health, constructed in such manner as he may specify, shall be provided in the yard or court, level with the surface thereof and at a point easy of access to the occupants of such dwelling. ('17 c. 137 § 104)

[4755—]81. **Cleanliness of dwellings**—Every dwelling and every part thereof shall be kept clean and shall also be kept free from any accumulation of dirt, filth, rubbish, garbage or other matter in or on the same, or in the yards, courts, passages, areas, or alleys connected with or belonging to the same. The owner of every dwelling, and in the case of a private dwelling the occupant thereof, shall thoroughly cleanse or cause to be cleansed all rooms, passages, stairs, floors, windows, doors, walls, ceilings, privies, water-closets, cesspools, drains, halls, cellars, roofs and all other parts of the said dwelling, or part of the dwelling of which he is the owner, or in the case of a private-dwelling the occupant, to the satisfaction of the commissioner of health, shall keep the said parts of the said dwellings in a cleanly condition at all times, but this section shall not be construed to require the owner to keep clean the individual apartments of a two-family-dwelling or a multiple-dwelling of Class A, except where such apartments are unoccupied. It shall be the duty of each occupant to keep the portion of the dwelling occupied by him and over which he has control in a cleanly condition at all times. ('17 c. 137 § 105)

[4755—]82. **Walls of courts**—In multiple-dwellings the walls of all courts, unless built of a light color brick or stone, shall be thoroughly whitewashed by the owner or shall be painted a light color by him, and shall be so maintained. Such whitewash or paint shall be renewed whenever necessary, and walls of light color brick or stone shall be cleaned or whitewashed whenever necessary, as may be required by the commissioner of health. ('17 c. 137 § 106)

[4755—]83. **Walls and ceilings of rooms**—In all multiple-dwellings the commissioner of health may require the walls and ceilings of any room to be whitewashed, kalsomined white or painted with white paint when necessary to improve the lighting of such room and may require this to be renewed as often as may be necessary. ('17 c. 137 § 107)

[4755—]84. **Wall paper**—Whenever required by the commissioner of health, all old wall paper shall be removed and the walls and ceilings thoroughly cleaned before being redecorated. ('17 c. 137 § 108)

[4755—]85. **Receptacles for ashes, rubbish and garbage**—Suitable tight metal cans, with covers, for holding ashes, rubbish, garbage, refuse and other matter shall be provided and maintained for every dwelling. In the case of private-dwellings and two-family-dwellings such cans shall be provided by the occupant. In the case of multiple-dwellings of Class A where there are janitors, each family shall provide its own cans, but the owner shall provide such general cans to receive such waste materials as may be necessary. Wherever the owner of a multiple-dwelling of Class A provides individual cans for each apartment, it shall be the duty of the occupant of such apartment to keep the cans used by him in a cleanly condition at all times. Garbage chutes and bins are prohibited, but this shall not be construed as prohibiting garbage incinerators, inside of chimneys, if properly constructed. ('17 c. 137 § 109)

[4755—]86. **Prohibited uses**—No horse, mule, cow, calf, swine, sheep, goat, chicken, or other fowl shall be kept in any dwelling or part thereof. Nor shall any such animal be kept on the same lot or premises with a dwelling except under such conditions as may be prescribed by the commissioner of health. No such animal except a horse or mule, shall under any circumstances be kept on the same lot or premises with a multiple-dwelling.

No dwelling or the lot or premises thereof shall be used for the storage or handling of rags or junk. ('17 c. 137 § 110)

[4755—]87. **Combustible materials**—No dwelling, nor any part thereof, nor of the lot upon which it is situated shall be used as a place of storage, keeping or handling of any article so that it is dangerous or detrimental to life or health; nor of any combustible article, except under such conditions as may be prescribed by the fire marshal under authority of a written permit

issued by him. No multiple-dwelling nor any part thereof, nor of the lot upon which it is situated, shall be used as a place of storage, keeping or handling of feed, hay, straw, excelsior, cotton, paper stock, feathers or rags. ('17 c. 137 § 111)

[4755—]88. **Bakers and fat boiling**—No bakery and no place of business in which fat is boiled shall be maintained in any non-fire-proof multiple-dwelling of Class A hereafter erected, and no bakery and no place of business in which fat is boiled shall hereafter be installed in any non-fire-proof multiple-dwelling of Class A. ('17 c. 137 § 112)

[4755—]89. **Certain dangerous businesses**—There shall be no transom, window or door opening into a public hall from any portion of a multiple-dwelling where paint, oil, drugs or spirituous liquors are stored or kept for the purpose of sale or otherwise. This provision shall not apply to hotels. ('17 c. 137 § 113)

[4755—]90. **Janitor or housekeeper**—In any multiple-dwelling in which the owner thereof does not reside, there shall be a janitor, housekeeper or other responsible person who shall have charge of the same, if the commissioner of health shall so require. ('17 c. 137 § 114)

[4755—]91. **Overcrowding**—If any room in a dwelling is overcrowded, the commissioner of health may order the number of persons sleeping or living in said room to be so reduced that there shall be not less than six hundred cubic feet of air to each adult and four hundred cubic feet of air to each child under twelve years of age occupying such room. ('17 c. 137 § 115)

[4755—]92. **Lodgers**—The commissioner of health may prescribe conditions under which lodgers or boarders may be taken in dwellings and may prohibit the letting of lodgings therein. ('17 c. 137 § 116)

[4755—]93. **Infected and uninhabitable dwellings to be vacated**—Whenever it shall be certified by an inspector or officer of the health department that a dwelling is infected with contagious disease, the commissioner of health may issue an order requiring all persons therein to vacate such dwelling within twenty-four hours for the reasons to be mentioned in said order.

The commissioner of health shall cause such dwelling to be disinfected, and shall, when the temperature is below freezing, protect from freezing at the expense of the owner of said dwelling all plumbing and heating apparatus in such dwelling.

Whenever it shall be certified by an inspector or officer of the health department that a dwelling is unfit for human habitation or dangerous to life and health by reason of want of repair, or defects in the drainage, plumbing, lighting, ventilation, or the construction of the same, or by reason of the existence on the premises of a nuisance likely to cause sickness among the occupants of said dwelling, or for any other cause, the commissioner of health may order the owner or other person having control of the dwelling to remedy such defect within a period of not less than five days nor more than thirty days, said order to be served according to the provisions of section 148 of this act. In case such order is not complied with within the time specified, the commissioner of health may issue an order requiring all persons therein to vacate such dwelling within not less than twenty-four hours nor more than ten days for the reasons to be mentioned in said order.

In case an order to vacate is not complied with within the time specified, the commissioner of health may cause said dwelling to be vacated. The commissioner of health, whenever he is satisfied that the danger from said dwelling has ceased to exist, or that it is fit for human habitation, may revoke said order or may extend the time within which to comply with the same. ('17 c. 137 § 117)

[4755—]94. **Repairs to buildings, et cetera**—Whenever any dwelling or any building, structure, excavation, business pursuit, matter or thing, in or about a dwelling, or the lot on which it is situated, or the plumbing, sewerage, drainage, light or ventilation thereof, is in the opinion of the commis-

sioner of health in a condition or in effect dangerous or detrimental to life or health, the commissioner of health may declare that the same to the extent that he may specify is a public nuisance, and may order the same to be removed, abated, suspended, altered or otherwise improved or purified as the order shall specify. In addition to the above powers the commissioner of health may also order or cause any dwelling or excavation, building, structure, sewer, plumbing pipe, passage, premises, ground, matter or thing, in or about a dwelling, or the lot on which it is situated, to be purified, cleansed, disinfected, removed, altered, repaired or improved. If any order of the commissioner of health issued under the authority of the provisions of this act is not complied with, or so far complied with as he may regard as reasonable, within fifteen days after the service thereof, or within such shorter time as he may designate, then such order may be executed by said commissioner of health, through his officers, agents, employés or contractors. ('17 c. 137 § 118)

[4755—]95. **Fire-escapes**—The owner of every multiple-dwelling on which there are fire-escapes shall keep them in good order and repair, and whenever rusty shall have them properly painted. No person shall at any time place any incumbrance of any kind before or upon any such fire-escape. ('17 c. 137 § 119)

[4755—]96. **Scuttles, bulkheads, ladders and stairs**—In all multiple-dwellings where there are scuttles or bulkheads, they and all stairs or ladders leading thereto shall be easily accessible to all occupants of the building and shall be kept free from incumbrance and ready for use at all times. No scuttle and no bulkhead door shall at any time be locked with a key, but either may be fastened on the inside by movable bolts or hooks. ('17 c. 137 § 120)

ARTICLE V—IMPROVEMENTS

In this article will be found those improvements in the older buildings required as a matter of compulsory legislation.

[4755—]97. **Rooms, lighting and ventilation of**—No room in a dwelling erected prior to the passage of this act shall hereafter be occupied for living purposes unless it shall have a window of an area of not less than eight square feet opening directly upon the street, or upon a rear yard not less than ten feet deep, or above the roof of an adjoining building, or upon a court or side yard not less than twenty-five square feet in area, open to the sky without roof or skylight unless such room is located on the top floor and is adequately lighted and ventilated by a skylight opening directly to the outer air. Except that a room which does not comply with the above provisions may be occupied if provided with a sash window not less than fifteen square feet in area opening into an adjoining room in the same apartment, group or suite of rooms, which latter room opens directly upon the street or upon a yard of the above dimensions. Said sash window shall be vertically sliding pulley hung sash not less than three feet by five feet between stop beads; both halves shall be made so as to readily open, and the lower half shall be glazed with translucent glass and so far as possible it shall be in line with windows in the said outer room opening on the street or yard so as to afford a maximum of light and ventilation. Where between such rooms a cased opening already exists of dimensions not less than the combined area of such sash windows and the usual door opening, it shall be deemed the equivalent of the sash window above required. ('17 c. 137 § 125)

[4755—]98. **Public halls and stairs, lighting and ventilation of**—In all dwellings erected prior to the passage of this act, the public halls and stairs shall be provided with as much light and ventilation to the outer air as may be deemed practicable by the commissioner of health, who may order the cutting in of windows and skylights and such other improvements and alterations in said dwellings as in his judgment may be necessary and appropriate to accomplish this result. All new skylights hereafter placed in

such dwellings shall be provided with ventilators having a minimum opening of forty square inches and also with either fixed or movable louvres or with movable sash; all such skylights and windows shall be of such size as may be determined to be practicable by said commissioner of health. ('17 c. 137 § 126)

[4755—]99. **Sinks and lavatories**—In all dwellings erected prior to the passage of this act, the woodwork enclosing sinks and lavatories shall be removed and the space underneath said sinks and lavatories shall be left open. The floor and wall surfaces beneath and around the sink and lavatory shall be put in good order and repair. ('17 c. 137 § 127)

[4755—]100. **Water-closets**—In all dwellings erected prior to the passage of this act, the woodwork enclosing all water-closets shall be removed from the front of said closets, and the space underneath the seat shall be left open. The floor or other surface beneath and around the closet shall be put in good order and repair. ('17 c. 137 § 128)

[4755—]101. **Privy vaults, school-sinks and water-closets**—Whenever a connection with a sewer is possible, as provided in section eight of this act, all privy vaults, school-sinks, cess-pools or other similar receptacles used to receive fecal matter, urine or sewage, shall before July first, nineteen hundred and eighteen, with their contents, be completely removed and the place where they were located properly disinfected under the direction of the commissioner of health. Such appliances shall be replaced by individual water-closets of durable non-absorbent material, properly sewer-connected, and with individual traps, and properly connected flush tanks providing an ample flush of water thoroughly to cleanse the bowl. Each such water-closet shall be located inside the dwelling or other building in connection with which it is to be used, in a compartment completely separated from every other water-closet, and such compartment shall contain a window of not less than four square feet in area opening directly to the street, or rear yard or on a side yard, or court of the minimum sizes prescribed in sections twenty-two, twenty-three and twenty-four of this act. The floors of the water-closet compartments shall be as provided in section fifty of this act. Such water-closets shall be provided in such numbers as required by section ninety-eight of this act. Such water-closet and all plumbing in connection therewith shall be sanitary in every respect and, except as in this act otherwise provided, shall be in accordance with the local ordinances and regulations in relation to plumbing and draining. Pan, plunger and long hopper closets will not be permitted. No water-closet shall be placed out of doors.

Whenever a water-closet is installed in a dwelling and connected either to the sewer or to a cesspool, all existing privy vaults on the premises, with their contents, shall be completely removed and the places where they were located properly disinfected under the direction of the commissioner of health. ('17 c. 137 § 129)

[4755—]102. **Basement and cellars**—The floor of the cellar or lowest floor of every dwelling shall be free from dampness and when necessary, shall be concreted with not less than three inches of concrete of good quality and with a finished surface. ('17 c. 137 § 130)

[4755—]103. **Shafts and courts**—In every dwelling where there is a court or shaft of any kind, there shall be at the bottom of every such shaft or court an opening giving sufficient access to such shaft or court to enable it to be properly cleaned out. ('17 c. 137 § 131)

[4755—]104. **Egress**—Every multiple-dwelling exceeding one story in height shall have at least two independent ways of egress constructed and arranged as provided in section sixty-one of this act. In the case of multiple-dwellings erected prior to the passage of this act where it is not practicable to comply in all respects with the provisions of that section, the inspector of buildings shall make such requirements as may be appropriate to secure proper means of egress from such multiple-dwellings for all the occupants thereof. No existing fire-escape shall be deemed a sufficient means of egress unless the following conditions are complied with:

(1) All parts of it shall be of iron or other incombustible material.

(2) The fire-escape shall consist of outside balconies which shall be properly connected with each other by adequate stairs or stationary ladders, with openings not less than twenty-four by twenty-eight inches.

(3) All fire-escapes shall have proper drop ladders or stairways from the lowest balcony of sufficient length to reach a safe landing place beneath.

(4) All fire-escapes not on the street shall have a safe and adequate means of egress from the yard or court to the street or alley on the adjoining premises.

(5) Prompt and ready access shall be had to all fire-escapes, which shall not be obstructed by bath-tubs, water-closets, sinks or other fixtures, or in any other way.

All fire-escapes that are already erected which do not conform to the requirements of this section may be altered by the owner to make them so conform in lieu of providing new fire-escapes, but no existing fire-escape shall be extended or have its location changed except with the written approval of the inspector of buildings. All fire-escapes hereafter erected on any multiple-dwelling shall be located and constructed as prescribed in section sixty-two of this act. ('17 c. 137 § 132)

[4755—]105. Additional means of egress—Whenever any multiple-dwelling is not provided with sufficient means of egress in case of fire, the inspector of buildings shall order such additional means of egress as may be necessary. ('17 c. 137 § 133)

[4755—]106. Roof egress, scuttles, bulkheads, ladders and stairs—Whenever so required by the inspector of buildings, every flat-roofed multiple-dwelling exceeding two stories in height erected prior to the passage of this act shall have in the roof a bulkhead, or a scuttle which shall be not less than two feet by three feet in size. All such bulkheads and scuttles shall be fire-proof or covered on the outside with metal and shall be provided with stairs or stationary ladders leading thereto and easily accessible to all occupants of the building. No scuttle or bulkhead shall be located in a room, but shall be located in the ceiling of the public hall on the top floor, and access through the same to the roof shall be direct and unobstructed. When deemed necessary by the inspector of buildings scuttles shall be hinged so as to open readily. Every bulkhead in such multiple-dwelling shall have stairs with guide or hand-rail leading to the roof, and such stairs shall be kept free from incumbrance at all times. No scuttle and no bulkhead door shall at any time be locked with a key, but either may be fastened on the inside by movable bolts or hooks. All key-locks on scuttles and on bulkhead doors shall be removed. ('17 c. 137 § 134)

ARTICLE VI—REQUIREMENTS AND REMEDIES

In this article will be found the legal requirements, penalties and violations of the law, procedure, et cetera.

[4755—]107. Permit to commence building—Before the construction or alteration of a dwelling, or the alteration or conversion of a building for use as a dwelling, is commenced, and before the construction or alteration of any building or structure on the same lot with a dwelling, the owner or his agent shall have the lot or plot of ground on which such building is located, or is to be located, surveyed by a competent surveyor or civil engineer and the corners properly marked with iron stakes, and such owner or his agent or his architect shall submit to the inspector of buildings a detailed statement in writing, verified by the affidavit of the person making the same, of the specifications for such dwelling or building, upon blanks or forms to be furnished by such inspector of buildings, and also full and complete indelible copies of the plans of such work. With such statement there shall be submitted a plat of the lot or plot of ground on which any such dwelling or building is to be erected or placed, showing the location and outside dimensions of such proposed dwelling or building; also the location and outside dimensions of other existing buildings, if any, on such lot or plot of ground,

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together with the size of all yards and courts in connection therewith. Each such plat so submitted shall bear the certificate of a competent surveyor or civil engineer, stating that he has surveyed said lot or plot of ground, and has set iron stakes, firmly driven, at each corner thereof, and that the dimensions marked on said plat are in accordance with a correct survey of the property. Provided that whenever alterations affect only the interior of a dwelling no such survey or plat need be filed unless required by the inspector of buildings.

Provided further that the plans and specifications for a private-dwelling costing less than three thousand five hundred dollars need be only such as will advise the building department of the character of the proposed building, the sufficiency of such plans and specifications to be determined by said building department. Such statement shall give in full the name and residence, by street and number, of the owner or owners of such dwelling or building and the purposes for which such dwelling or building will be used. If such construction, alteration or conversion is proposed to be made by any other person than the owner of the land in fee, such statement shall contain the full name and residence, by street and number, not only of the owner of the land, but of every person interested in such dwelling, whether as owner, lessee or in any representative capacity. Such affidavit shall allege that said specifications and plans are true and contain a correct description of such dwelling, building, structure, lot and proposed work. The statements and affidavits herein provided for may be made by the owner, or by the person who proposes to make the construction, alteration or conversion, or by his agent or architect. No person, however, shall be recognized as the agent of the owner unless he shall file with the said inspector of buildings a written statement signed by such owner designating him as such agent. Any false swearing or affirming in a material point in any such affidavit shall be deemed perjury. Such specifications, plans and statements shall be filed in the said building department and shall be deemed public record but no such specifications, plans or statements shall be removed from said building department. The inspector of buildings shall cause all such plans and specifications to be examined. If such plans and specifications conform to the provisions of this act, they shall be approved by the inspector of buildings and certified to that effect. Such inspector of buildings may, from time to time, approve changes in any plans and specifications previously approved by him, provided the plans and specifications when so changed shall be in conformity with law. The construction, alteration or conversion of such dwelling, building or structure, or any part thereof, shall not be commenced until the filing of such specifications, plans and statements, and the approval thereof, as above provided. The construction, alteration or conversion or [of] such dwelling, building or structure shall be in accordance with such approved specifications and plans. Any permit or approval which may be issued by the inspector of buildings but under which no work has been done above the foundation walls within six months from the time of the issuance of such permit or approval, shall expire by limitation. Such inspector of buildings shall have power for just cause to revoke or cancel any permit or approval in case of any failure or neglect to comply with any of the provisions of this act, or in case any false statement or representation is made in any specifications, plans or statements submitted or filed for such permit or approval. Whenever improvements or alterations are ordered by the commissioner of health in a dwelling heretofore erected, the plans for such changes must, before a permit is issued by the inspector of buildings, be submitted to the commissioner of health and by said commissioner approved. ('17 c. 137 § 140)

[4755—]108. **Certificate of compliance**—No building hereafter constructed as or altered into a dwelling shall be occupied in whole or in part for human habitation until the issuance of a certificate by the inspector of buildings that said dwelling conforms in all respects to the requirements of this act relative to dwellings hereafter erected. Such certificate shall be issued within seven days after written application therefor if said dwelling at the

date of such application shall be entitled thereto. Nothing in this section contained shall be construed so as to prohibit the inspector of buildings from issuing a certificate for the occupancy of any complete unit of a multiple-dwelling when such unit is entitled thereto. Upon request in writing by the owner of the dwelling, the inspector of buildings shall issue a certificate of compliance up to the stage of the dwelling's development at that time, but shall not be required to issue more than one such certificate. ('17 c. 137 § 141)

[4755—]109. **Unlawful occupation**—If any building hereafter constructed as or altered into a dwelling be occupied in whole or in part for human habitation in violation of section one hundred and forty-one of this act, said premises shall be deemed unfit for human habitation and the inspector of buildings may cause them to be vacated accordingly. ('17 c. 137 § 142)

[4755—]110. **Penalties for violations**—Every person who shall violate or assist in the violation of any provision of this act shall be punishable by a fine of not more than one hundred dollars or by confinement in the city work-house for a period not to exceed ninety days, and upon failure to pay such fine, by confinement until such fine is paid. Each day's continuance of the violation of this act shall be deemed a separate offense. ('17 c. 137 § 143)

[4755—]111. **Procedure**—In addition to the punishments specified in this act, the city may enforce this act by any appropriate form of civil action and may enjoin violation of the act and compel obedience thereto by mandatory orders and writs, and cause the abatement of everything existing in violation thereof, and cause premises to be vacated, if occupied in violation thereof, and to remain vacant until the court shall find that violation has ceased, and for these purposes any court of competent jurisdiction may render, enter, make and issue any and every appropriate judgment, decree, writ and order and cause the same to be executed. For the purpose of this section violations of orders, regulations and ordinances made pursuant to this act shall be deemed violations of the act. Costs and disbursements shall be allowed in proceedings hereunder as in other civil actions. The acts, proceedings and authority of the commissioner of health and the inspector of buildings shall be treated as *prima facie* just and legal. ('17 c. 137 § 144)

[4755—]112. **Tenant's responsibility**—If the occupant of a dwelling shall fail to comply with the provisions of this act after due and proper notice from the commissioner of health, such failure to comply shall be deemed sufficient cause for the summary eviction of such tenant by the owner and the cancellation of his lease. ('17 c. 137 § 145)

[4755—]113. **Registry of agent's name**—Every owner, agent or lessee of a dwelling may file in the health department a notice containing the name and address of an agent of such house, for the purpose of receiving service of process, and also a description of the property by street number or otherwise as the case may be, in such manner as will enable the health department easily to find the same. The name of the owner or lessee may be filed as agent for this purpose. ('17 c. 137 § 146)

[4755—]114. **Service of notices and orders**—Every notice or order in relation to a dwelling shall be served five days before the time for doing the thing in relation to which it shall have been issued. The posting of a copy of such notice or order in a conspicuous place in the dwelling, together with the mailing of a copy thereof on the same day that it is posted, to each person, if any, whose name has been filed with the health department in accordance with the provision of section one hundred and forty-six of this act at his address as therewith filed, shall be sufficient service thereof. ('17 c. 137 § 147)

[4755—]115. **Service of summons**—In any action brought in relation to a dwelling for injunction, vacation of premises or abatement of nuisance, service of the summons shall be made as in civil actions, and the summons may be served by publication if other service cannot be had; but the court may by *ex parte* order limit the time for answer to ten days. ('17 c. 137 § 148)

[4755—]116. **Indexing names**—The names and addresses filed in accordance with section one hundred and forty-six of this act shall be indexed by the commissioner of health in such manner that all of those filed in relation to each dwelling shall be together and readily ascertainable. The proper city authorities shall provide the necessary books and clerical assistance for that purpose and the expense thereof shall be paid by the city. Said indexes shall be public record, open to public inspection during business hours. ('17 c. 137 § 149)

[4755—]117. **Enforcement**—The provisions of articles one, two and three of this act shall be enforced by the inspector of buildings; article four shall be enforced by the department of health; the provisions of article five except sections one hundred and thirty-two, one hundred and thirty-three and one hundred and thirty-four thereof shall be enforced by the department of health; the provisions of sections one hundred and thirty-two, one hundred and thirty-three and one hundred and thirty-four shall be enforced by the inspector of buildings. In carrying out any orders of the department of health which involve structural changes, the work shall be done under the supervision of the inspector of buildings, in accordance with the ordinances, laws and regulations relative thereto. Each of said departments shall keep and preserve as to each building a complete record of all inspections, permits and orders issued pursuant to this act. ('17 c. 137 § 150)

[4755—]118. **Powers conferred**—The powers conferred by this act upon the commissioner of health, city engineer and the inspector of buildings shall be in addition to the powers already conferred upon said officers, and shall not be construed as in any way limiting their powers except as provided in section seven of this act. ('17 c. 137 § 151)

[4755—]119. **Inspection of dwellings**—The commissioner of health shall cause a periodic inspection to be made of every multiple-dwelling at least once a year. Such inspection shall include thorough examination of all parts of such multiple-dwelling and the premises connected therewith. The commissioner of health is also hereby empowered to make similar inspection of all dwellings as frequently as may be necessary. ('17 c. 137 § 152)

[4755—]120. **Right of entry**—The commissioner of health, the inspector of buildings, and all inspectors, officers and employes of the health department and the building department, and such other persons as may be authorized by the commissioner of health or the inspector of buildings, may, in the performance of their duties, without fee or hindrance, enter, examine and survey all premises, grounds, erections, structures, apartments, dwellings, buildings and every part thereof in the city. The owner or his agent or representative and the lessee and occupant of every dwelling and every person having the care and management thereof shall at all reasonable times when required by any of such officers or persons give them free access to such dwellings and premises. The owner of a dwelling and his agents and employes shall have right of access to such dwelling at reasonable times for the purpose of bringing about a compliance with the provisions of this act or any order issued thereunder. ('17 c. 137 § 153)

[4755—]121. **Laws repealed**—All statutes of the state and all local ordinances or parts thereof so far as inconsistent with the provisions of this act are hereby repealed. Wherever this act requires a greater width or size of yards or courts, or requires a lower height of buildings, or requires a greater percentage of lot to be left unoccupied, or imposes other higher standards than is required in any local ordinance or regulation, the provisions of this act shall govern. Wherever the provisions of any local ordinance or regulation require a greater width or size of yards or courts, or require a lower height of building, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than is required in this act, such local ordinance or regulation shall govern. ('17 c. 137 § 154)

[4755—]122. **Validity**—If any section or clause or part of this act shall be found invalid, the validity of the remainder shall in no way be affected there-

by. The act shall be liberally construed to promote its general objects for the health, safety and welfare of the community. ('17 c. 137 § 155)

[4755—]123. **When to take effect**—This act shall take effect sixty days from and after its passage. No dwelling, however, on which work has not progressed above the foundations by November first, 1917, shall be erected under the laws in force when this act takes effect, but such dwelling shall be erected in accordance with the provisions of this act. ('17 c. 137 § 156)

CHAPTER 32

PRESERVATION OF GAME

GENERAL PROVISIONS

4756. [Superseded.]

See §§ [4756—]1 to [4756—]3.

[4756—]1. **Game and fish commission abolished**—The position of state game and fish commission and the executive agent of said commission is hereby abolished. ('15 c. 355 § 1)

Section 4 repeals all acts and parts of acts inconsistent herewith.

By § 5 the act takes effect August 1, 1915.

See 1917 c. 461, creating a commission to revise and codify the game laws, etc.

[4756—]2. **Office of game and fish commissioner created**—There is hereby created the office of state game and fish commissioner who shall be appointed by the governor for a term of two (2) years at a salary of twenty-five hundred (\$2500.00) dollars a year. All of the duties, powers, privileges and prerogatives, including the appointment and fixing of salaries of necessary employees to carry on the work, prescribed by statutes now in force for the state game and fish commission and the executive agent thereof, is hereby conferred upon the state game and fish commissioner. ('15 c. 355 § 2)

[4756—]3. **Powers of employees**—The employees appointed to carry on the work shall have the same duties, powers, privileges and prerogatives which are conferred by statutes now in force upon the employees of the game and fish commission. ('15 c. 355 § 3)

4758. General powers—Duties—

See 1915 c. 359, authorizing sale of the property of the third state fish hatchery at Deerwood, and 1917 c. 504, establishing an eighth hatchery south of the Minnesota river.

[4758—]1. **Condemnation for fish hatcheries**—Whenever an appropriation shall have been made by the legislature of the State of Minnesota for the establishment of a fish hatchery on certain lands or parcels of land and when it is not possible to effect the purchase of such portion of such land as is necessary for the purpose, or when in the opinion of the State Game and Fish Commissioner the price demanded for such necessary land by the owners thereof is unreasonable and excessive, the Attorney General of the State of Minnesota shall, upon the written request of the State Game and Fish Commissioner, commence condemnation proceedings to secure such necessary land, together with the necessary water rights, if any, necessary to secure the successful operation of such fish hatchery, and such condemnation proceedings shall be had, conducted and completed substantially as provided for in Sections 5412 and 5413, G. S. 1913, and the appropriation referred to or such part thereof as may be necessary may be used either to purchase such necessary land and water rights or to pay therefor pursuant to the award or judgment in such condemnation proceeding. ('17 c. 3 § 1)

4768. Contraband nets, devices, fire arms, etc.—Seizure—Sale, etc.—All nets, seines, lanterns, snares, fire arms, spears, boats, traps, headlights, or other devices, contrivances and materials while in use or had or maintained

for the purpose of catching, taking or killing or attracting or deceiving any bird, animal or fish contrary to any provision of this chapter within this state or upon or in the boundary waters thereof, including fish houses, inclosed or other sheltering structures or appliances erected or maintained upon the ice or in any water or on the shore of any lake, pond or stream, is hereby declared to be a public nuisance. The commissioner, all game wardens, sheriffs and their deputies, constables and police officers shall, without warrant or process, take, seize, abate and destroy any and all of the same while being used, had or maintained for such purpose and no liability shall be incurred therefor to any person; provided, that all such articles, devices, contrivances and materials which have a lawful use may, in the discretion of the commissioner, be sold for the highest price obtainable and that all funds obtained from the sale of such seized articles shall be paid to the state treasurer. (Amended '17 c. 252 § 1)

4771. Exchange of specimens—The game and fish commissioner may secure, by purchase or otherwise and exchange specimens of game birds, eggs of game birds, game animals, fish eggs, or fish, with the game commission or state game warden of other states, or with the federal government for breeding and stocking purposes, and not otherwise; and may also grant permission under the seal of said commissioner, to any accredited representative of any incorporated society of natural history, college or university, to collect for scientific purposes only, nests eggs, birds, animals or fish protected by law, and may also grant permission under seal to any municipal corporation maintaining an established zoological collection under proper care, to procure specimens of animals or birds protected by law, for such zoological collections. (Amended '17 c. 281 § 1)

4772. Fishways—

Cited (126-110, 147+946).

4775. Disposition of other moneys—

Money received by auditors before August 1, 1913, and remitted to the state treasurer after that date, is not available by the commission for payment of expense incurred during the fiscal year ending July 31, 1914. The appropriation of hunters' license fees is abolished by §§ 48 and 49 (126-110, 147+946). States, ~~4~~132.

4776. Rewards—The following rewards may be paid by the game and fish commission out of any fund subject to its order to any person or persons making complaint thereof for the arrest and conviction or for furnishing evidence sufficient to secure conviction of any person violating any of the provisions of this chapter or other enactments involving: (a) moose or caribou, the sum of fifty dollars: (b) deer, the sum of twenty-five dollars: (c) any game or other bird or fish, ten dollars, provided, however, that this section shall not apply to any game warden regularly employed and receiving salary from said commission. (Amended '17 c. 249 § 1)

GAME BIRDS AND ANIMALS

4782. Hunting certain aquatic fowl—It shall be unlawful and is hereby prohibited for any person or persons;

(1) To pursue, take, catch, or kill any aquatic fowl by any other means than by the use of guns held at arm's length and discharged from the shoulder;

(2) To pursue, take, catch, or kill any aquatic fowl, or to hunt with or shoot from any boat, canoe, contrivance or device whatever not otherwise prohibited on any of the waters of this state outside or beyond the natural covering of weeds, rushes, or other vegetation growing above the water, or within such natural covering or vegetation in any boat or craft except such as are propelled by paddle, oar, oars or pole held in the hands:

Provided that nothing in this act shall be construed to prohibit any person or persons from entering upon the open water with boat or boats for the purpose of pursuing, taking, catching or killing any of the aquatic fowl which such person or persons may have wounded by shooting in compliance with the provisions of this act.

(3) To hunt or molest aquatic fowl, other than wild geese and brant by the use of a rifle, between the 7th day of September of any year and the succeeding first day of December. But nothing in this section contained shall prevent the pursuing, taking, catching or killing of wild geese and brant, by the use of shot guns held at arm's length and discharged from the shoulder, upon the frozen waters, rivers and lakes of this state between the seventh day of September of any year and the succeeding first day of December. (Amended '15 c. 181 § 1; '17 c. 385 § 1)

4789. Open season for birds—Number allowed—No person shall hunt, take, kill, ship, convey, or cause to be shipped, or transported by common or private carrier, to any person either within or without the state, expose for sale, sell to any one, have in possession with intent to sell, or have in possession or under control at any time any mourning dove, snipe, prairie chicken or pinnated grouse, white, breasted or sharptailed grouse, quail, partridge or ruffed grouse, Chinese ringneck or English pheasant, wild duck of any variety, brant, or any variety of aquatic fowl whatever, or any part thereof, except—

First. That any mourning dove, snipe, prairie chicken or pinnated grouse, white breasted or sharptailed grouse, woodcock, upland plover, and golden plover may be killed and had in possession between the 16th day of September and the first day of October following: Provided that no mourning dove, snipe (other than Wilson or Jacksnipe and greater and lesser yellow legs) woodcock, upland plover or golden plover shall be taken, killed or had in possession before September 16th, 1920.

Second. That any quail, partridge or ruffed grouse, Chinese ringneck or English pheasant may be killed or had in possession between the first day of November and the first day of December following; provided that no partridge or ruffed grouse or Chinese ringneck or English pheasant shall be killed or had in possession before the fifteenth (15th) day of October, 1920.

Third. That wild duck of any variety, coot, gallinules, fails, wild goose of any variety, brant, may be killed and had in possession between the 16th day of September and the first day of December following: Provided that no wood duck shall be taken, killed or had in possession before Sept. 16th, 1920.

And when any of the birds mentioned in this section have been lawfully caught, taken, killed or had in possession within the time herein allowed, they may be had in possession for five days thereafter, but no person shall, in any one day, take or kill more than five birds of any kind and all varieties, except wild ducks of which not over fifteen shall be taken or killed in one day or have in his possession at any time more than thirty game birds of any and all varieties, except wild ducks of which not more than forty-five may be had in possession at any one time, (provided that not more than ten (10) quail may be taken or killed in one day and that not over twenty (20) quail may be had in possession at any one time.) No person shall take or kill more than twenty-five (25) prairie chickens or pinnated grouse, or thirty (30) quail in any one open season. Provided, that whenever any of the game mentioned in this section shall have been lawfully shot or taken by any resident of this state in any state wherein the season for so lawfully taking the same shall be earlier or later than herein stated, such resident may ship, to himself only in this state, and have in possession therein during the seasons allowed by the law of such state for the taking thereof any such game so lawfully taken in such state and for five days thereafter. (Amended '15 c. 237; '17 c. 121 § 1)

4791. Resident license for hunting game birds—Shipment of game—Every resident of this state over fourteen years of age, is prohibited from hunting, taking or killing any game birds unless he shall have first procured a license therefor from the county auditor of the county in which he resides; provided, however, that this shall not apply to any resident of the state hunting on land owned or leased and occupied as the permanent residence by said resident, or to any member of his immediate family. Said auditor shall upon application issue to such person a license under his seal, upon blanks to be furnished by the game and fish commissioner, and upon payment of the license

fee of one dollar for each such license issued, which license shall be valid only for the open season for game birds during the year for which such license is issued. Ten cents of the amount received for the issuance of said license shall be retained by the county auditor as his fee and the balance remitted to the state treasurer. Every such applicant shall prove to the satisfaction of the county auditor that he is a bona fide resident of this state, and shall state under oath his name, residence and post office address. Only one of such licenses shall be issued to any person and it shall not be transferable, and it is hereby made the duty of such licensee to exhibit the same to any person upon request.

Such license shall describe the licensee, designate his place of residence, and shall have attached thereto three (3) coupons upon which shall be printed the words, "game birds." Each coupon shall be divided into two sections lettered respectively, "A" and "B." Any resident who has paid said fee and procured such license to hunt game birds, may, during the open season hunt, take and kill game birds in the manner and subject to the limitations and conditions prescribed by this chapter and amendments thereto, and may ship by common carrier in the manner herein provided and not otherwise, to any point in the county in which he resides forty-five (45) game birds in three shipments of not to exceed fifteen (15) birds each, so lawfully shot or had in possession. Said game birds may be shipped by said licensee to himself, to his place of residence by common carrier by attaching to such game birds section "B" of said coupon. Upon receiving such game it is made the duty of said common carrier to detach from the license section "A" of said coupon and at once forward same by mail to the game and fish commissioner.

Provided, however, that nothing in this chapter contained shall be deemed or construed to prevent any resident of this state from personally carrying with him as baggage, on any train or conveyance any game birds or fish which may be legally in his possession, and any common carrier is hereby permitted to carry such game birds or fish as baggage when the same is so accompanied and carried on the same train or conveyance by the person who is legally in possession of same.

Provided, further, that nothing herein contain[ed] shall be construed to permit employes of a common carrier to carry any such game birds or fish with them whether as baggage or otherwise, while engaged in the performance of the duties of their said employment and they are specifically prohibited from so doing.

Provided, further, that sections "A" and "B" of each said coupon shall have printed thereon the words "Signature of consignor" and so arranged as to provide a blank space for such signature.

At any time of shipping by common carrier of any game birds the consignor in such license shall personally sign his name to said section "A" and "B" in the presence of two witnesses, one of whom shall be the agent of said common carrier.

Provided, further, that in case any of the game birds when shipped and carried as herein permitted are covered, wrapped or contained in any package, sack, box, trunk or receptacle whatsoever, each such shipment, package, sack, box, trunk or receptacle whatsoever shall have upon the outside thereof in plain view while in transit the coupon tag herein provided for, also a clearly and legibly written or printed statement setting forth the full and correct name and address and license number of the licensee shipping or carrying same, and a full, true and correct list or statement giving the name, number and kinds of game birds or game animals or parts thereof contained in said shipment, package, sack, box, trunk, or other receptacle, which list or statement shall be personally signed by the licensee shipping or carrying same, and the person so shipping or carrying same shall promptly open, unwrap, or unlock every such package or receptacle whatsoever upon demand of any game warden and in the absence of licensee any game warden shall have the right to open any package, sack, box, trunk or receptacle whatsoever to inspect and count the contents of same. The shipment of any game bird by any common

carrier or agent thereof or by any person except after full compliance with the provisions of this section, is hereby made unlawful.

Whoever shall offend against any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than ten (\$10) nor more than fifty (\$50.00) dollars and the cost of prosecution or by imprisonment in the county jail for not less than thirty nor more than sixty days for each and every offense. (Amended '15 c. 287; '17 c. 503 § 1)

126-110, 147+946; note under § 4775.

4792. Resident license for hunting game animals—Shipment—Every resident of this state is prohibited from hunting, taking, killing any game animals unless he shall have first procured a license therefor from the county auditor of the county in which he resides. Said auditor shall not issue to any person a license prior to three days before the opening of the season, such license to be issued under his seal and upon blanks to be furnished him by the game and fish commission and upon payment of the license fee of one (\$1.00) dollar, which license shall be valid only for the open season for game animals during the year for which said license is issued. Ten cents of the amount received for the issuance of said license shall be retained by the county auditor as his fee and the balance remitted to the state treasurer who shall credit same to the game and fish commission fund to be used for the purpose of enforcing the provisions of this chapter. Every such applicant shall prove to the satisfaction of the county auditor that he is a bona fide resident of the state and shall state under his oath, his name, residence and postoffice address. Only one of such license shall be issued to any person and it shall not be transferable and it is hereby made the duty of each licensee to exhibit the same to any person upon request. Such license shall describe the licensee, designate the place of his residence and shall have attached thereto two coupons upon which shall be printed respectively the words "moose" and "deer." The coupon marked "deer" shall be divided into four sections, lettered respectively "A," "B," "C" and "D." The coupon marked "moose" shall be divided into four sections lettered respectively "A," "B," "C" and "D."

Any resident who has paid said fee and procured such license to hunt game animals, may during the opening [open] season hunt, take and kill one (1) male, antlered moose or one (1) deer. He shall immediately upon the killing of a deer or moose detach one coupon marked "section B", and attach same to the animal killed and the coupon shall remain upon said deer or moose as provided in this section. The said deer or moose must be taken in the manner and subject to the limitations and conditions prescribed by this chapter and amendments thereto and may ship by common carrier in the manner herein provided and not otherwise, to any point in the county in which he resides one (1) moose or one (1) deer or any part thereof so lawfully shot or had in possession. Said game animals may be shipped by said licensee to himself to his place of residence, by common carrier, upon attaching to such game animals or any part thereof section "B" of said coupon. Upon receiving such game it is made the duty of said common carrier to detach from the license section "A" of said coupon and at once forward the same by mail to the game and fish commission.

Provided, however, that nothing contained shall be construed to permit employes of a common carrier to carry any such animals or parts thereof with them, whether as baggage or otherwise, while engaged in the performance of the duties of their said employment and they are specifically prohibited from so doing.

Provided further, that sections "A," "B," "C" and "D" of each said coupons shall have printed thereon the words "signature of consignor" and so arranged as to provide a blank space for such signature.

At any time of shipping by any common carrier of any animals or parts thereof the consignor named in such license shall personally sign his name to said sections "A," "B," "C" and "D" in the presence of two witnesses, one of whom shall be the agent of the common carrier.

The hide of any such game animal may be shipped by common carrier by

said licensee to any point within or without the state of Minnesota for the purpose of having the same tanned, upon attaching to such hide section "C" of said coupon. The head of any such game animal may be shipped by common carrier by said licensee to any point within or without the state of Minnesota, for the purpose of having the same mounted, upon attaching to said head section "D" of said coupon.

The shipment of any game animal, or the hide or head thereof, by any common carrier or agent thereof, or by any person except after full compliance with the provisions of this section, is hereby made unlawful.

Whoever shall offend against any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty (\$50.00) nor more than one hundred (\$100.00) dollars and the cost of prosecution, or by imprisonment in the county jail for not less than thirty nor more than ninety days for each and every offense. (Amended '15 c. 287; '17 c. 226 § 1)

4793. Non-resident license—Shipment of game—Every person not a resident of this state is prohibited from hunting, taking or killing any game bird or game animal unless he shall have first procured a license therefor from the game and fish commissioner. Said commissioner shall upon application issue to any non-resident, a license to hunt game animals, upon the payment to said commissioner of a license fee of twenty-five dollars, and to hunt game birds, upon a payment to said commissioner of a license fee of ten dollars, which license shall expire on the 31st day of December following its issuance. Said license to hunt game animals shall describe the licensee, designate his place of residence, and shall have attached thereto two coupons divided into three sections, lettered respectively "A," "B," and "C." The words "deer" and "moose" shall be printed upon the coupons attached thereto. Any non-resident who has paid said fee and procured such license to hunt game animals, may during the open season, kill in the manner authorized by this chapter, one male antlered moose or one deer, and also ship such deer or moose so killed by him to his said place of residence outside the state, upon attaching to such game animal, or any part thereof, respectively, sections "B" and "C" of said coupon. Upon receiving said game, it is the duty of the common carrier to detach from the license section "A" of said coupon and at once forward the same by mail to the commissioner. Sections "B" and "C" of said coupons must remain on said deer, or part thereof, so shipped outside the state, while in transit within this state, and section "C" of said coupon must be detached by said common carrier at the last station or place in this state where the train or other conveyance of such common carrier shall stop, and it shall be the duty of said common carrier to forward section "C" of said coupon to the game and fish commissioner immediately upon being detached. Said license to hunt game birds shall describe the licensee, designate his place of residence, and shall have attached thereto one coupon divided into three sections, lettered respectively, "A," "B," and "C." The words "game birds" shall be printed upon the coupon attached thereto. Any non-resident who has paid said fee and procured a license to hunt game birds may hunt, take and kill game birds in the manner authorized by this chapter, during the open season, subject to the limitations applicable to residents of this state, and may ship to his place of residence outside this state, twenty-five game birds so lawfully shot and taken by him, upon attaching to such game birds sections "B" and "C" of said coupon. Upon receiving said game birds, it is the duty of the common carrier to detach from the license, section "A" of said coupon, and at once forward the same by mail to the game and fish commissioner. Sections "B" and "C" of said coupon must be detached by said common carrier at the last station or place in this state where the train or conveyance of such common carrier shall stop, and it shall be the duty of said common carrier to forward section "C" of said coupon to the game and fish commissioner immediately upon being detached. Said licenses shall not be transferable, and it is hereby made the duty of said licensee to exhibit the same to any person upon request. ('05 c. 344 § 35, amended '17 c. 310 § 1)

Cited (128-110, 147-946).

4795. Permits to retain game—Application to commission—Tags or seals—Prohibitions—Penalties—Any person who is a resident of this state and legally in possession of any of the game birds or game animals, or any part thereof, which have been caught, taken or killed at a time or in a manner permitted by the provisions of this chapter, and who is desirous of retaining possession of the same for his own use after the time in this chapter limited, shall before such time, make application to the commission for leave to retain the same, which application shall be in writing and signed or sworn to by the applicant and shall state:

First. The name and residence of the person in possession of such birds or animals or parts thereof.

Second. The number, kind and location of said birds or animals or parts thereof.

Third. That if permitted to retain the same by said commission the applicant will retain possession of said birds and animals for his own use and will not ship, sell or dispose of the same.

If said commission is satisfied that said application is made in good faith and said applicant will keep said birds and animals and parts thereof, for his own use and not for sale, the said commission shall cause tags or seals which shall not be duplicated by others, and which shall not be removed, to be attached to each bird or animal or parts thereof, or in lieu thereof; if any applicant therefor resides at a distance from any game warden then the commission may issue to such applicant a written permit to keep and use such game.

The person making such application shall, before said tags or seals are attached, pay to the commission the reasonable expense of making and attaching such tags and seals. After the tags and seals have been so attached, or such permit received, the person holding such permit may, while the tags or seals remain upon said birds and animals and parts thereof, retain possession of the same until consumed; provided, that no game birds may be retained or had in possession after December thirty-first (31) of the year in which such game birds were taken or killed, and that no moose or deer or parts thereof may be retained or had in possession after January 31st of the year following that in which such game was taken or killed.

Provided, that nothing in this chapter contained shall prevent a person from disposing of as a gift, any of the birds and animals mentioned herein. The having in possession of any game bird or animal or any part thereof which is not so tagged and sealed or for which a retention permit has not been received, except during the open season and five days thereafter is hereby made unlawful. Any such game bird or game animal, or any part thereof, had or held in possession by any person during the season when it is unlawful to have the same in possession, is hereby declared contraband and the right of any such person to retain or use the same shall cease. Any person who shall destroy, imitate, or duplicate any tag or seal attached to any bird or animal or part thereof, or who shall ship or sell any game bird or animal or any part thereof, which has been tagged or sealed as aforesaid, or for which a permit to keep and use the same has been issued, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five nor more than fifty dollars and costs of prosecution, or by imprisonment in the county jail for not less than thirty nor more than sixty days for each and every bird or animal or part thereof, so shipped, sold or disposed of. (Amended '15 c. 351 § 1)

4796. Beaver, otter, mink, muskrat, and certain other animals—No person shall take, catch or kill any beaver at any time, or any mink or muskrat between the fifteenth day of April and the first day of December following, and no person shall molest, injure or destroy any muskrat, mink or beaver house, den or dam at any time, or hunt or pursue such animals with dog or dogs, except that in the open season herein provided for the taking, catching or killing of muskrats, muskrat houses, may for the purpose of placing traps therein, be opened in such manner only as will not destroy, damage or injure the same as a place of habitation for muskrats. Provided, that when any of

the animals mentioned in this section, excepting beaver, are doing damage to or destroying any private property or public highway, or are likely to damage or destroy any such private property or public highway, the person whose private property is being or is likely to be damaged, or destroyed, or the town board of the town in which such public highway is situate that is being or is likely to be so damaged or destroyed, may make complaint and report the facts to the game and fish commissioner, who shall either in person or by a deputy game warden, investigate the conditions complained of, and if it appears that the complaint is well founded, and the property of such complainant or the public highway, as the case may be, is being or is likely to be damaged or destroyed by any such animals, the game and fish commissioner may grant permission properly safe-guarded to the complainant in case of private property or in case of public highways to such person or persons as may be designated by the town board in question, to kill such animals or destroy the houses, dams, or other structures erected by them. (Amended '17 c. 497 § 1)

See 1917 c. 413.

4800. Game birds defined—Killing of other birds—No person shall catch, take, kill, ship or cause to be shipped to any person within or without this state, purchase, offer or expose for sale, sell to any one, have in possession with intent to sell, or have in possession or under control at any time, living or dead, any wild bird, other than a game bird, nor any part thereof, and for the purpose of this chapter the following only shall be considered game birds:

The family anatidae, commonly known as swan, geese, brant, river and sea ducks; The family rallidae, including rails, gallinules and coots; the order limicolae, commonly known as plover, snipe and woodcock; the order gallinae, commonly known as grouse, prairie chickens, pheasants, partridges and quail; the order columbae, or pigeons and doves; provided that blackbirds, crows, English sparrows, sharp-skinned hawks, goshawks and cooper hawks and great horned owls may be killed and had in possession at any time; and provided further that any birds may be killed or destroyed under authority of the game and fish commissioner when they are found to be destroying or injuring game birds on state game farms or state game refuges, or destroying or injuring fish in state fish hatcheries; but nothing herein contained shall be construed to prevent the keeping and sale of song birds as domestic pets. (Amended '17 c. 253 § 1)

[4806—]1. Hunting from motor vehicle—It shall be unlawful for any person at any time to hunt, take, shoot or kill any of the game, birds or animals mentioned in chapter 32, General Statutes of Minnesota for 1913 [1612-1614 (sic)], from a motor vehicle. ('17 c. 225 § 1)

[4806—]2. Same—Penalty for violation—Any person violating any of the provisions of this act shall be guilty of a misdemeanor and shall be punished by a fine of not less than ten dollars nor more than fifty dollars and the costs of prosecution or by imprisonment in the county jail for not less than sixty days. ('17 c. 225 § 2)

FISH

4807. State divided into two zones for catching of fish—Open seasons—For the purposes of this section the state shall be divided into two zones, namely zone one (1) and zone two (2). Zone one (1) shall include all that part of the state of Minnesota north of the north line of township one hundred twenty-four (124), west of the fifth (5th) principal meridian and north of the north line of township thirty-five (35) west of the fourth (4th) principal meridian. Zone two (2) shall include all that part of the state of Minnesota south of the north line of township one hundred twenty-four (124), west of the fifth (5th) principal meridian and south of the north line of township thirty-five (35), west of the fourth (4th) principal meridian.

No person shall catch, take, kill or have in possession or under control

for any purpose whatever any of the fish hereinafter mentioned within the periods herein limited, to-wit:

In zone one: Any variety of trout or salmon, except lake trout caught in international waters, between the first day of September and the first day of May, following: any black, or Oswego bass between the first day of March and the fifteenth of June following; any variety of pike, muscallonge, crappie, perch, sunfish, sturgeon, catfish or any other variety of fish between the first day of March and the first day of May following.

In zone two: Any variety of trout or salmon, except lake trout caught in international waters, between the first day of September and the fifteenth day of April, following: any black, or Oswego bass between the first day of March and the twenty-ninth day of May, following; any variety of pike, muscallonge, crappie, perch, sunfish, sturgeon, catfish or any other variety of fish between the first day of March and the first day of May following. (Amended '17 c. 468 § 1)

4808. Number allowed—Manner of taking—Nets in inland lakes—Permit—No person shall catch, take or kill more than twenty-five (25) crappies or trout of any variety, fifteen pikeperch or wall-eyed pike, fifteen (15) bass of any variety except rock bass, in any one day, nor in any other manner than by angling for them with a hook and line held in the hand or attached to a rod so held, nor with more than one line or with more than one bait attached thereto, except that it shall not be unlawful to use three artificial flies in trout fishing, and no person shall have in his possession more than twenty-five (25) bass of any variety except rock bass and no person shall have in his possession any fish caught, taken or killed in any of the waters of this state except as provided in this chapter.

Provided that not more than twenty-five (25) pickerel or buffalo fish, ten (10) whitefish, or one (1) sturgeon may be taken per day with a spear, and that suckers, redhorse, carp dogfish, eel-pout, garfish and bullheads may be taken with a spear without limit at any time, but no artificial lights shall be used in taking of said fish, except that artificial lights may be used in spearing such fish in lakes from November 1st to November 15th, and in streams only during the months of April and October, provided that no such light shall be used in spearing fish within five hundred (500) feet of any lake, and provided further that no fish shall be speared at any time within one hundred (100) feet of any fishway or dam or within one hundred (100) feet of any state fish hatchery, but this provision shall not apply to any county now having a population of over 200,000 inhabitants, or to any lake or stream where the game and fish commissioner has declared that spearing shall not be permitted.

Provided further, that in all of the inland lakes of this state permission having been granted therefor, but not otherwise, a net may be used for the purpose of taking and catching whitefish, tullibees, or trelipies, exclusively for the domestic use of the licensee, from November first (1st) to January tenth (10th) following. Said net shall not exceed one hundred (100) feet in length and three (3) feet in width, and the meshes of said net shall not be less than three and one-half ($3\frac{1}{2}$) inches in the size of mesh where the same is extended. Each applicant shall indicate in his application the approximate location at which his nets are to be set, and it shall be unlawful for same to be set elsewhere than designated in said application.

There shall be set at one end of each net a stake or pole projecting at least two feet above the surface of the water,

No nets shall be set nearer together than fifty feet, and each net must have attached thereto when in use, a metal tag to be furnished for that purpose by the game and fish commissioner. The sale of whitefish and trelipies so caught is hereby prohibited.

Any person desiring to use any such net shall first make application for a permit therefor to the commissioner in writing and shall state that the said net is to be used by them for the purpose of obtaining fish for their domestic use and not for the purpose of sale, which application shall be accompanied by a fee of one (\$1.00) dollar for each net, but no person shall be permitted

to use more than two (2) of such nets, and such fish shall not be sold or offered for sale. (Amended '15 c. 352; '17 c. 501 § 1)

On a prosecution for illegal fishing with a seine under this section, the state makes out a prima facie case by proving the acts prohibited thereby without negating the exceptions in § 4850 (126-386, 148-458). Indictment and Information, ~~§~~ 111(1).

[4808—]1. Licenses for gill nets in inland lakes—The game and fish commissioner is hereby authorized to grant licenses for gill nets for use in taking fresh water herring in inland lakes of the state for the domestic use of the licensee, but not for sale, from November first (1st) to January tenth (10th) following.

Said nets shall not exceed 100 feet in length and three (3) feet in width, and the mesh of said nets shall not be less than one and three-quarters ($1\frac{3}{4}$) inches in size when same is extended.

Each applicant shall indicate in his application the approximate location at which his nets are to be set and it shall be unlawful for the same to be set elsewhere than designated in said application.

Said nets shall not be set deeper than three (3) feet below the surface of the water and there shall be set at one end of each net a stake or pole, projecting at least two feet above the surface of the water.

No nets shall be set nearer together than fifty (50) feet and each net must have attached thereto when in use, a metal tag to be furnished for that purpose by the game and fish commissioner.

No nets authorized by this act, shall be set in any lake except such as are known to contain herring. Any person desiring to use any such net shall first make application for a permit therefor to the game and fish commissioner in writing, which application shall be accompanied by a fee of one (\$1.00) dollar for each net, but no person shall be permitted to use more than two (2) of such nets. ('17 c. 176 § 1)

4818. Manner of taking—Seines and nets in certain waters—License, etc.—Penalty for violation—

1907 c. 315 and 1911 c. 48 cited—126-110, 147-946.

4820-4825. [Repealed.]

See § [4825—]14.

[4825—]1. Commercial fishing in international waters—Licenses—The game and fish commissioner is hereby authorized to issue licenses to residents of Minnesota, who are citizens of the United States, for pound nets, fyke nets, and gill nets for use in commercial fishing in international waters, excepting Lake Superior, under the jurisdiction of the State of Minnesota, subject to the following regulations and conditions: ('17 c. 96 § 1)

[4825—]2. Same—Size and kind of nets—Pound nets—The size of the mesh of the pot or pound of pound nets shall not be less than $1\frac{1}{2}$ inches bar measure, or 3 inches extension measure. Pound nets may be set in strings in Lake of the Woods, but no string of such nets shall exceed 2 in number, and the leads of such shall in no case exceed the following lengths: The shore lead 80 rods and the leads between the pounds or pots 50 rods in length. Said net or string of nets shall not be less than 2500 feet apart. In lakes other than Lake of the Woods not more than one license shall be issued for any one section.

Gill Nets—The size of the mesh of gill nets shall not be less than 4 inches, extension measure, for taking pickerel and pike perch, and not less than 5 inch mesh, extension measure, for taking whitefish, and no net shall be longer than 750 feet. No gill net shall be set within one mile of any regularly licensed pound net.

Fyke Nets—The size of the mesh of fyke nets shall not be less than 3 inches, extension mesh; said nets shall not be larger than 6 feet in height in any part of the net, and leaders shall not exceed 300 feet in length.

No pound net, gill net or fyke net shall be used without first having obtained a license therefor, and it shall be unlawful to use any net in international waters except such as are expressly herein permitted to be used. ('17 c. 96 § 2)

[4825—]3. **Same—Number of nets—Licenses, in what waters—**Licenses shall not be issued for more than 10 pound nets, 4500 feet of gill net, or 5 fyke nets to any one person, firm, co-partnership, or corporation, for any one fishing season. Provided, however, that no license shall be issued to any one person, firm, co-partnership, or corporation to fish more than 1000 feet of gill netting in any lake whose area exceeds 400 square miles.

Licenses shall not be granted for any waters except the following lakes, nor in excess of the following number of pound nets and gill nets for each body of water named:

Lake of the Woods.....	100 pound nets, and 75,000 feet of gill nets
Rainy Lake.....	40 pound nets, and 45,000 feet of gill nets
Kabetogoma Lake.....	16 pound nets, and 11,250 feet of gill nets
Namekan Lake.....	20 pound nets, and 22,500 feet of gill nets
Sand Point Lake.....	5 pound nets, and 5,250 feet of gill nets
Loon Lake.....	3 pound nets, and 3,750 feet of gill nets
La Croix Lake.....	10 pound nets, and 7,500 feet of gill nets

No net shall be located elsewhere than as stated in the license therefor except upon written permission of the game and fish commissioner. ('17 c. 96 § 3)

[4825—]4. **Same—Applications and fees—**Applications for licenses under this act shall be made in writing on blanks to be furnished for that purpose by the game and fish commissioner, and shall state accurately the location of each pound net and each fyke net desired to be used. Fees, for each fishing season, shall accompany each application as follows:

For each pound net.....	\$25.00
For each fyke net.....	5.00
For each 100 feet of gill nets.....	1.00

Licenses shall not be transferable and may be granted for one fishing season only. ('17 c. 96 § 4)

[4825—]5. **Same—Nets to bear tags—How set—**Every net licensed under this act shall have attached thereto when in use a numbered metal tag, to be furnished by the game and fish commissioner.

No net shall be set within 500 feet of the mouth of any stream, nor within one mile of the mouth of the Wairroad River in Lake of the Woods, nor within three miles of the outlet of Rainy Lake. ('17 c. 96 § 5)

[4825—]6. **Same—Open season—**The open season for fishing under this act shall be from May 15th to March 31st following, both days inclusive, excepting the month of November, which month shall be closed to such fishing. ('17 c. 96 § 6)

[4825—]7. **Same—Fish may be kept, how long—**Fish caught in nets licensed under this act, may be had in possession by the licensee for one week after the close of the fishing season. ('17 c. 96 § 7)

[4825—]8. **Same—Persons other than owners forbidden to interfere with nets, etc.—**It shall be unlawful for any person not the owner, or his agent, duly authorized, to take any fish from any licensed nets, or to wilfully disturb or interfere with such nets. ('17 c. 96 § 8)

[4825—]9. **Same—Shipment of fish, etc.—**Fish caught in licensed nets, or with hook and line, in open season, in international waters, may be shipped and sold within or without the state. ('17 c. 96 § 9)

[4825—]10. **Same—Fish houses—**Fish houses may be used on international waters herein ascribed subject to the same provisions of law as govern the use of fish houses on other waters of the state. ('17 c. 96 § 10)

[4825—]11. **Same—Reports to commissioner—**Every person, firm, co-partnership or corporation receiving a license for fishing under this act shall make a written report, on blanks to be furnished for that purpose by the game and fish commissioner, at the end of each fishing season to said commissioner, stating accurately and in detail the amount in pounds of each kind of fish caught, the price at which such fish were sold, and the total value of each kind. ('17 c. 96 § 11)

[4825—]12. **Same—Nets for procuring eggs**—The game and fish commissioner shall have authority, for the purpose of procuring eggs of fish for supplying fish hatcheries, to authorize the use of nets in international waters at any time of the year under such regulations and restrictions as may be prescribed by him but no such nets shall be used for such purpose except under direct charge of the game and fish commissioner or his agents. ('17 c. 96 § 12)

[4825—]13. **Same—Penalty for violation**—Any person, violating any of the provisions of this act, shall, upon conviction thereof, be punished by a fine of from fifty (\$50.00) to one hundred (\$100.00) dollars or by imprisonment in the county jail from 30 to 90 days for each and every offense. ('17 c. 96 § 13)

[4825—]14. **Same—Laws repealed**—Chapter 566 of the General Laws of 1913 [4820–4825], and chapter 347 of the General Laws of 1915, are hereby repealed. ('17 c. 96 § 14)

[4825—]15. **Taking fish and game in state boundary waters prohibited—Exceptions—Licenses**—The taking of any fish with, or the placing, maintaining or using of a net or seine in any river, lake or waters forming the boundary line between Minnesota and any other state of the United States, or the taking of game, including any game birds or game animals of any kind in any such river, lake or waters, except as authorized by law of either of such abounding states, is hereby prohibited and made unlawful; provided that the state game and fish commissioner may in his discretion at such times as he may deem proper, permit the seining of rough or non-protected fish from such river, lake or waters. Provided, that no fishing for commercial purposes under license shall be done in any of the waters which form the boundary between the state of Minnesota and any other state, except under the personal supervision of a duly commissioned game warden one-half ($\frac{1}{2}$) the salary and expense of said supervising warden to be paid for by the licensee. Provided that the total amount for salary and expense for said supervising warden to be paid by the licensee, shall not exceed the sum of two (\$2.00) dollars per day, such supervising warden to be paid only for such time as he is actually employed, and more than one licensee may be supervised by the said supervising warden during the same day, and the said licensee, so joining, may join in the payment for such services. ('17 c. 505 § 1)

[4825—]16. **Same—Jurisdiction of courts and game wardens**—For the purpose of enforcing the provisions of this act, the courts of this state sitting in the various counties contiguous to said waters, and the game wardens of this state, are hereby given and shall have jurisdiction over the entire boundary waters of the state, to the furthestmost shore line; and concurrent jurisdiction of the courts and the administrative officers of this state, the states of North Dakota, South Dakota, Wisconsin and Iowa over all boundary waters between such states and the whole thereof, is hereby recognized. ('17 c. 505 § 2)

[4825—]17. **Same—Penalty for violation**—Whoever shall offend against any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment for not less than sixty days nor more than ninety days or both such fine and imprisonment for each and every offense. ('17 c. 505 § 3)

[4825—]18. **Same—Fishing with licensed set lines—When to take effect**—The provisions herein contained requiring supervision of commercial fishing by game wardens shall not apply to fishing with licensed set lines, and shall not take effect and be in force as to the boundary waters between the state of Minnesota and the state of Wisconsin until the state of Wisconsin shall have enacted a similar law. ('17 c. 505 § 4)

4830. **Same—Closed season for game fish other than black bass**—It shall be unlawful for any person to take or catch in any manner any game fish, except black bass, from or in the said waters at any time between the first (1st) day of March and the first (1st) day of May following in each year. Such period of time between the first (1st) day of March and the first (1st) day of

May following in each year shall be termed the closed season for game fish. The balance of each year shall be termed the open season as to such fish. The open and closed season for black bass shall be the same as in the inland waters of the state. (Amended '17 c. 483 § 1)

4835. Same—Set lines—Any person duly licensed so to do may take and catch rough fish during the open season for game fish by means of a set line. No set line shall have more than three hundred hooks thereon and such hooks shall not be baited with frogs, minnows, or live bait. No person shall use or set more than one set line. (Amended '17 c. 478 § 1)

4850—4856. [Superseded.]

See §§ [4856—]1 to [4856—]9.

4850—This section was not repealed by § 4808. Justification under this section was a matter of defense and the state need not negative it in a prosecution under § 4808 (126-386, 148-458). Indictment and Information, ~~§~~ 111(1).

[4856—]1. Seining certain fish except in certain rivers—License—Fees—That the state game and fish commissioner may issue to any proper person a license to fish for and take, catch or capture with seines, carp, dogfish, garfish, sheephead, lawyer or ling, buffalo, and suckers in any of the waters under the jurisdiction of this state, except that portion of the Mississippi river and Lake St. Croix which form the boundary between the states of Minnesota and Wisconsin and no fishing or seining under this act shall be permitted in any county in which the county board, at their regular meeting in July of each year shall have prohibited such fishing and seining; provided that no such action shall be taken by said county commissioners at any other meeting or at any other time and that no lake or lakes of any county having been closed by such action of said county commissioners, shall be re-opened at any subsequent meeting during the succeeding year and it shall be unlawful for any board of county commissioners to enter into any contract for or accept on behalf of their respective counties, any payment of any money or any commission on the proceeds of such fishing.

Provided, however, that such person using or operating such nets or seines for the taking of such fish shall do so only under the direction and personal supervision of a duly commissioned game warden. Every person obtaining such license shall pay not less than ten per cent of the gross receipts in case the quantity of fish caught does not exceed forty thousand (40,000) pounds per month; twenty per cent of the proceeds amounting to forty thousand (40,000) to one hundred thousand (100,000) pounds per month; thirty per cent of the proceeds of all in excess of one hundred thousand (100,000) pounds per month, from any and all fishing done pursuant to any license issued under the provisions of this act; and included as an item of expense in the doing of such fishing shall be the compensation and actual expenses of any game warden or game wardens necessary to enforce the provisions of this act. ('15 c. 261 § 1, amended '17 c. 386 § 1)

1915 c. 261 § 10 repeals all acts and parts of acts inconsistent with this act.

[4856—]2. Same—Application for license—Bond—Application for such license to use nets or seines as herein provided shall state the name and residence of the applicant, the number and the size of the nets or seines he intends to use and operate, and the waters in which he intends to use or operate such nets or seines. Before any such license shall be issued the applicant shall execute and deliver to the game and fish commission a bond running to the State of Minnesota in such penal sum as may be determined upon by the state game and fish commission not to exceed the sum of \$5,000, to be approved by the said state game and fish commission. ('15 c. 261 § 2)

[4856—]3. Same—Regulation of seines and nets—That no license shall be issued by virtue of the provisions of this act for the use of any net with a mesh less than two and one-half inches bar in the pot, and that it shall be unlawful for any person using or operating a seine or net under the provisions of this act to use any seine or net having a smaller mesh than as herein provided. ('15 c. 261 § 3)

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[4856—]4. **Same—License not to issue to certain persons**—That no license to use seines or nets under the provisions of this act shall be issued or granted to any person duly commissioned to act as a game and fish warden under the laws of this state; or to any person who has within two years prior to the date of his application been convicted of a violation of any provision of the game and fish laws; and that it shall be unlawful for any duly and properly commissioned game and fish warden of the State of Minnesota to be a partner of, or in any way or manner financially interested with any person who shall fish for, take or capture by the use of seines or nets, any of the kinds of fish mentioned herein. ('15 c. 261 § 4)

[4856—]5. **Same—Certain fish to be returned to water**—Any person licensed by the provisions of this act to take any of the kinds of fish herein mentioned, shall immediately after the use and drawing of the nets and seines, return unharmed to the water any and all fish of any kind and description not by the terms of this act expressly permitted to be taken by the use of nets or seines. ('15 c. 261 § 5)

[4856—]6. **Same—Close season**—It shall be unlawful for any person using or operating a seine or net under a license issued according to the provisions of this act, to fish for, take, or capture any fish whatever, whether mentioned by the provisions of this act or not, at any time between the first day of April and the first day of October of any year; provided, however, that the provisions of this section shall not apply to any lakes or waters which form a boundary between the State of Minnesota and any other state. ('15 c. 261 § 6)

[4856—]7. **Same—License moneys, to whom paid**—All moneys payable under the terms of any license issued pursuant to this act shall be paid to the state game and fish commission of the State of Minnesota and by them paid to the state treasurer. ('15 c. 261 § 7)

[4856—]8. **Same—Fishing under supervision of commissioner—Records and reports**—All fishing done under the provisions of this act shall be under the direct supervision and control of the state game and fish commission and any person or persons doing such fishing shall keep an accurate account of any and all transactions had in connection with such fishing, and the books containing a record of such transactions shall be open to the inspection and examination of the state game and fish commission, or to such person as it may designate for that purpose. It is further provided, that any person or persons fishing pursuant to the terms and conditions of this act shall make weekly reports in writing to the state game and fish commission and as much oftener as may be required by said commission. ('15 c. 261 § 8)

[4856—]9. **Same—Penalty for violation**—Any person or persons who shall violate any of the provisions of this act, or any of the terms of any license issued by the state game and fish commission under the authority of this act, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than \$25.00 nor to exceed the sum of \$100.00, or by imprisonment in the county jail for a period of not less than thirty days nor to exceed ninety days. ('15 c. 261 § 9)

[4856—]10. **Obstructions interfering with seining in certain rivers prohibited**—No person shall place, maintain or cause to be placed or maintained in any place which has been or shall be used or prepared for seining in the waters within this state or in the waters of the St. Croix river, including that part thereof known as Lake St. Croix, the waters of the Mississippi river below the mouth of the St. Croix river, including that part thereof known as Lake Pepin, any obstructions, except lawfully constructed docks or boat landings, or licensed fishing nets legally set, or buoys or boats properly stationed or anchored, which will in any manner interfere with, hinder or prevent such seining or the use of [or] operation of seines in such places by persons duly licensed to operate such seines in any of such waters; and any person or persons so licensed to operate such seines shall for such purpose have the full right to remove any and all such obstructions from such places in any

of such waters, and in case it becomes necessary in operating such seines to remove duly licensed fishing nets legally set no damage shall be done there-to and such fishing nets shall be immediately reset by such person or persons as soon as said seines have been drawn. ('17 c. 452 § 1)

[4856—]11. **Same—Penalty for violation**—Any person or persons who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than \$25.00 nor more than \$100.00 or by imprisonment in the county jail for a period of not less than thirty days nor to exceed ninety days. ('17 c. 452 § 2)

4870. **Sale of trout, salmon and bass**—No person shall have in possession for sale, or with intent to sell, expose or offer for sale or sell to any person any brook trout or any other variety of trout or salmon whatever which may be caught in the inland waters of the state, or black or oswego bass, at any time, or ship, cause to be shipped, or had in possession with intent to ship, to any person either within or without the state any such fish, or have any black, or oswego bass in his possession except during the season for taking the same, or any trout during the closed season, except they are caught in a private hatchery. (Amended '17 c. 468 § 2)

4873. **Size of fish to be taken**—No person shall at any time catch, kill or have in possession or under control any fish for any purpose whatever, except minnows for bait, yellow perch, and bullheads that are less than six inches in length; or any black or oswego bass less than nine inches in length; or any lake trout or salmon caught in inland waters of the state less than sixteen inches in length. Any person catching such fish shall at once return same to the water from which they are taken with as little injury as possible.

No person shall take, kill, have in possession for sale or with intent to sell, offer or expose for sale, or have in possession or under control, for any purpose whatever, any lake trout caught in international waters, of less than two pounds, round or undressed weight, or one and one-half pounds, dressed weight with head, tail, fins and collar bone removed or any whitefish of less than sixteen inches in length or any sturgeon less than fifteen pounds dressed weight, or any wall-eyed pike of less than fourteen inches in length or one pound round or undressed weight, or any muscallonge less than thirty inches in length, or any blue pike or saugers of less than ten inches in length. Measurement in each case to be made from tip of the snout to the fork of the tail. Any such fish when caught shall be immediately returned to the water. (Amended '17 c. 468 § 3)

4874. [Repealed.]

See § [4874—]15.

[4874—]1. **Fishing in Lake Superior—License**—The state game and fish commissioner is hereby authorized to issue licenses to residents of Minnesota who are citizens of the United States, for skiffs and power boats for use in commercial fishing in that part of Lake Superior under the jurisdiction of the state of Minnesota, subject to the following regulations and conditions: ('17 c. 333 § 1)

[4874—]2. **Same—Nets to be used**—It shall be lawful to use nets as follows in such fishing:

Gill nets of not less than two and one-half ($2\frac{1}{2}$) inch mesh, extension measure, may be used for taking herring, provided that any gill nets of two and three-eighths ($2\frac{3}{8}$) inch mesh, extension measure, in use at the time of the passage of this act may be used until the end of the year 1918, and provided further, that gill nets of not less than two and one-eighth ($2\frac{1}{8}$) inch mesh, extension measure, may be used between April 15th and June 15th for the purpose of taking herring for use as bait only.

Gill nets of not less than four and one-fourth ($4\frac{1}{4}$) inch mesh, extension measure, may be used for taking lake trout. Gill nets of not less than two and five-eighths ($2\frac{5}{8}$) inch mesh, extension measure, may be used for taking ciscoes, provided that no nets for taking ciscoes shall be set in water less than sixty (60) fathoms in depth. ('17 c. 333 § 2)

[4874—]3. **Same—What nets unlawful**—No nets of any kind shall be used without first having obtained a fishing license therefor and it shall be unlawful to use any net in said waters except such as are herein expressly permitted to be used. ('17 c. 333 § 3)

[4874—]4. **Same—Set lines for trout**—Set lines may be used to taking lake trout. ('17 c. 333 § 4)

[4874—]5. **Same—Licenses for boats—Application—Fees—Tags, etc.**—Skiffs and power boats are hereby authorized to be used in such fishing as is authorized under this act when duly licensed. Applications for licenses for use of boats in fishing under this act shall be made in writing, on blanks to be furnished for that purpose, to the game and fish commissioner, which applications shall state the character and number of boats desired to be used.

Fees for license for each fishing season shall accompany each application as follows:

For each skiff, limited to the use of one man.....	\$ 2.00
For each skiff, limited to the use of two men.....	4.00
For each power boat of one gross ton capacity or less.....	5.00
For each power boat of from one to five gross ton capacity.....	10.00
For each power boat of five gross ton capacity.....	25.00
For each gross ton in excess of five gross ton capacity.....	2.00

Licenses shall not be transferable and shall be granted for one fishing season only. Each net used under license granted under this act shall have attached thereto when in use, a numbered metal tag to be furnished by the game and fish commissioner. No net shall be set within one-fourth ($\frac{1}{4}$) mile of the mouth of any stream flowing into Lake Superior. ('17 c. 333 § 5)

[4874—]6. **Same—Open season**—The open season for fishing under this act shall be from the first day of December to the first day of November, following for taking herring, provided that this provision for closing herring fishing in November shall not be effective until the state of Wisconsin shall provide for a similar close season; and from the first day of December to the first day of November, following, for taking lake trout. ('17 c. 333 § 6)

[4874—]7. **Same—Fish may be kept how long**—Fish caught in nets under license authorized by this act may be had in possession by the licensee for one week after the close of the fishing season. ('17 c. 333 § 7)

[4874—]8. **Same—Persons other than owners forbidden to interfere with nets, etc.**—It shall be unlawful for any person not the owner or his agent, duly authorized, to take any fish from any nets set by persons licensed under this act, or to wilfully disturb or interfere with such nets. ('17 c. 333 § 8)

[4874—]9. **Same—Shipment of fish, etc.**—Fish caught in such nets authorized for use by persons licensed under this act, or with hook and line in open season, may be shipped and sold within or without the state. ('17 c. 333 § 9)

[4874—]10. **Same—Packages to be marked**—All packages containing fresh or salted fish shall be plainly marked with a number, either by stencil or durable tag, said number to be furnished licensee by the game and fish commissioner. ('17 c. 333 § 10)

[4874—]11. **Same—Depositing offal prohibited**—It shall be unlawful for any person to place any fish gurry or fish offal in the waters of Lake Superior or in any waters tributary thereto. ('17 c. 333 § 11)

[4874—]12. **Same—Reports to commissioner**—Every person, firm, co-partnership, or corporation receiving a license for fishing under this act shall make a written report on blanks to be furnished for that purpose by the game and fish commissioner at the end of each fishing season, to said commissioner, stating accurately and in detail the amount, in pounds, of each kind of fish caught, the price at which such fish were sold and the total value of each kind. ('17 c. 333 § 12)

[4874—]13. **Same—Nets for procuring eggs**—The game and fish commissioner shall have authority, for the purpose of procuring eggs of fish for

supplying fish hatcheries, to authorize the use of nets in the waters of Lake Superior at any time of the year under such regulations and restrictions as may be prescribed by him but no such nets shall be used for such purpose except under direct charge of the game and fish commissioner or his agent. ('17 c. 333 § 13)

[4874—]14. **Same—Penalty for violation**—Any person violating any of the provisions of this act, shall upon conviction thereof, be punished by a fine of not less than fifty (\$50.00) dollars nor more than one hundred (\$100.00) dollars or by imprisonment in the county jail for not less than thirty (30) days nor more than ninety (90) days for each and every offense. ('17 c. 333 § 14)

[4874—]15. **Same—Laws repealed**—Section 4874 of the General Statutes of Minnesota for 1913 is hereby repealed. ('17 c. 333 § 15)

4881. **Same—Duties of deputy warden and commission—**

Cited (126-110, 147+946).

4892. **Catching fish in counties having 300,000 inhabitants**—No person shall catch, take or kill or attempt to catch, take or kill, any fish of any kind whatsoever, in or about any lake, lying wholly or partly in any of the counties of this state, to which this act shall apply, at any time, in any other manner than by angling for them with a hook and line held in the hand, or attached to a rod so held, nor with more than one line, nor with more than one bait attached thereto; provided, that pickerel, red horse, suckers, carp and bull-heads may be speared in a regularly licensed fish house between December 15 and March 1, following. (Amended '15 c. 157; '17 c. 65 § 1)

[4895—]1. **Fish in counties having 200,000 and not more than 275,000 inhabitants—Catching prohibited between March 1st and May 1st**—No person shall catch, take or kill, or attempt to catch, take or kill any fish of any kind whatsoever in or about any waters, except rivers, lying wholly or partly in any of the counties of this state, to which this act shall apply, between the first day of March and the first day of May following. ('17 c. 85 § 1)

• Section 6 repeals inconsistent acts, etc.

[4895—]2. **Same—How caught**—No person shall catch, take or kill, or attempt to catch, take or kill any fish of any kind whatsoever in or about any waters, except rivers, lying wholly or partly in any of the counties of this state, to which this act shall apply, at any time, in other manner, than by angling for them with a hook and line held in the hand, or attached to a rod so held, nor with more than one line or with more than one bait attached thereto. ('17 c. 85 § 2)

[4895—]3. **Same—Possession**—No person shall have in his possession any fish caught, taken or killed in violation of this act. ('17 c. 85 § 3)

[4895—]4. **Same—Penalty for violation**—Any person violating any of the provisions of this act, shall be guilty of a misdemeanor. ('17 c. 85 § 4)

[4895—]5. **Same—To what counties applicable**—This act shall apply to all counties of this state, now or hereafter having a population of not less than 200,000 and not more than 275,000 inhabitants. ('17 c. 85 § 5)

[4895—]6. **Removing fish from sloughs, etc., in winter when in danger of smothering—Powers and duties of commissioner**—Whenever information shall have been furnished the state game and fish commissioner by petition or otherwise that fish in any certain shallow sloughs, lake or lakes in any county of the state are smothering, or may be in immediate danger of smothering during the winter by reason of the shallowness of said slough, lake or lakes, it shall be the duty of the state game and fish commissioner to immediately, in person or by a game warden, make an investigation of said conditions reported.

If it is found upon such investigation that the fish in said shallow slough, lake or lakes are in fact smothering or in immediate danger of smothering, said game and fish commissioner shall have authority to catch by means of

nets or otherwise all such fish and transfer such as may be suitable for stocking purposes to other waters of the state.

Such varieties of fish so taken as may not be desirable for stocking purposes shall be sold and the proceeds thereof paid into the state treasury. ('17 c. 84 § 1)

[4895—]7. **Same—Permission to residents to take fish**—In case such shallow sloughs, lake or lakes, do not contain fish desirable for stocking other waters the game and fish commissioner is hereby authorized to grant permission, properly safeguarded, to residents of the state to take such fish as may be found therein by any means desired and at any time, for their own personal use. ('17 c. 84 § 2)

MISCELLANEOUS PROVISIONS

[4903—]1. **Game refuges—Powers and duties of commission**—Any owner or owners, lessee or lessees in possession of real property located outside the corporate limits of any city or village in the state may request of the state Game and Fish Commission that his or their lands be constituted a game refuge and thereupon the said Game and Fish Commission may declare the said lands a game refuge. Said petitioner or petitioners shall thereupon post signs upon said property reciting said order, stating that the same is a state game refuge and that trespassing by a person carrying arms is prohibited thereon under penalty of the law. Said signs shall be furnished said petitioner or petitioners by the said Game and Fish Commission without cost provided it has funds sufficient available for that purpose. Said order may be vacated in whole or part by the said Game and Fish Commission at any time upon petition or upon their own motion. ('15 c. 288 § 1)

[4903—]2. **Same—Closed season for frogs, game birds and animals—Petition and hearing—Penalties—Game refuge to include what**—Twenty-five or more residents of any county or counties of Minnesota and property owners therein may at any time petition to the state Game and Fish Commission requesting that a closed season for the killing of frogs, game birds and animals protected by law be ordered in a certain district, describing said district by metes and bounds. Thereupon the said Game and Fish Commission shall order a hearing upon said petition and post in five of the most prominent places in said district a notice of said hearing which notice shall be posted at least fifteen days prior thereto. Upon said hearing if it shall appear that, by reason of the depletion of the said frogs, game birds and animals therein, that the same are in danger of extermination and that said closed season shall be in the public interest the said Game and Fish Commission may declare a closed season either permanently or for a number of years therein and enter its order reciting the same. Fifteen days after the posting of said order in said district (as provided herein for the posting of the notice of hearing) the order shall go into effect. Said order may be revised from time to time upon notice, hearing, order, and posting as required herein.

Provided, that no game refuge shall be established under this chapter of less than 640 acres of contiguous lands. And provided further that no lands shall be included in such game refuge which are owned and occupied as a private duck pass.

Any party destroying or mutilating any of the signs or notices specified in this act shall be guilty of a misdemeanor.

Any person hunting or killing frogs, game birds or animals or trespassing while carrying arms upon any game refuge established in accordance with section 1 of this act [4903—1], shall be guilty of a misdemeanor.

Any person or persons hunting or killing any of the frogs, birds or animals protected by law upon any grounds upon which a closed season has been duly established in accordance with section 2 of this act [4903—2], shall be guilty of a misdemeanor.

Any game refuge established under section one (1) or section two (2) of this act shall be construed to include all public waters, and state, federal, or other public lands which may be enclosed within the boundaries of said refuge, and may include adjacent and contiguous public waters and state, federal or other public lands at the discretion of the state Game and Fish Commission. ('15 c. 288 § 2)

[4903—]3. **Same—Frogs for bait**—None of the provisions of this act shall be construed to prevent any person from using frogs for fish bait during any of the open seasons under the provisions of this act. ('15 c. 288 § 3)

[4903—]4. **Removal of carp from lakes containing feeding grounds for wild fowl**—Whenever, in any lake in this state containing wild celery beds which constitute a feeding ground for canvas-back, red head or other water fowl, carp become so numerous as to destroy or threaten the destruction of or serious damage to such celery beds, the state game and fish commission is hereby authorized to take or contract for the taking and removal of the carp from such waters. Such work if done by contract shall be directly supervised by the executive agent of the commission or by a game warden, the expense of supervision to be paid by the contractor. ('15 c. 348 § 1)

[4903—]5. **Same—How taken—Other fish**—In any such case, the carp may be taken at any season of the year, by the use of nets, or by the use of traps during the spawning season. If sturgeon, dogfish, garfish, sheephead, buffalo, eelpout or suckers are taken by such means together with the carp, they may likewise be retained and removed, but all other fish taken in the nets or traps shall be released and returned. ('15 c. 348 § 2)

[4903—]6. **Same—Cost, how paid, etc.**—The cost and expense of such work may be paid out of any funds in the state treasury appropriated for the use of the state game and fish commission, and any amounts realized therefrom shall be deposited in the state treasury, and of the amount so deposited there shall be available for the use of the commission an amount equal to that expended by it for such work. If the work is done by the commission, it may sell the fish taken for the best price it can obtain therefor. ('15 c. 348 § 3)

[4903—]7. **Same—Power of county board to forbid**—Fish shall not be so removed from any lake under the provisions of this act if the board of county commissioners of the county in which the lake is situated, shall pass a resolution forbidding the same but unless such resolution is passed before December 1st in any year, the county board shall not have power to forbid such removal of fish during the year following such December 1st. ('15 c. 348 § 4)

[MUSSELS]

[4910—]1. **Taking without license forbidden**—It shall be unlawful to take, catch or kill mussels for commercial purposes without a license issued by the state game and fish commission. ('17 c. 471 § 1)

Section 11 repeals all acts or parts of acts inconsistent with this act.
See 1905 c. 276.

[4910—]2. **License—Fees—Penalty for violation**—The state game and fish commission shall upon application issue a license to take, catch or kill mussels. On making application for such license, residents of this state shall pay to the state game and fish commission a fee of five dollars and non-residents shall pay to such game and fish commission a fee of fifty dollars and for authority to use a dredge, a fee of twenty-five dollars in addition to the fee fixed for a resident or a non-resident license. All such licenses shall expire on the thirty-first day of December following their issue. Licenses shall be consecutively numbered as issued and a record shall be kept thereof in the office of the state game and fish commission. Such licenses shall state whether it is a resident or non-resident license, whether the licensee is authorized to use a dredge, the resident address of the licensee and the amount paid for the li-

cense. Said license shall also state what waters have been closed to the capture of mussels by authority of this act.

Every person, while taking, catching or killing mussels for commercial purposes, shall have his license with him ready for exhibition and shall exhibit the same when requested to do so by an authorized officer.

Any person, firm or corporation violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of twenty-five dollars or by imprisonment in the county jail not less than twenty days. ('17 c. 471 § 2)

[4910—]3. What licensee may and may not do—Penalty—Any person, firm or corporation to whom a license under the provisions of this act has been issued, under such license so issued:

(1) May operate not more than one boat or one rig in taking catching or killing mussels for commercial purposes. Any such person, firm or corporation may use one additional boat for purposes of towing only when no apparatus for taking, catching or killing mussels is used or kept thereon.

(2) It shall be unlawful to have in possession on the waters while engaged in taking, catching or killing mussels for commercial purposes more than four crowfoot bars, not more than two of said crowfoot bars to be in water at one time, or more than one dredging mechanism or to use or have in possession a crowfoot bar of greater length than twenty feet, or a dredge the length of the openings of which is more than three feet, and which has prongs or forks more than four inches in length, or to have in possession on the waters while engaged in taking, catching or killing clams, a dredge without licensed authority therefor provided it shall not be unlawful to use a pitchfork in gathering clam shells.

Any person, firm or corporation violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of twenty-five dollars, or by imprisonment in the county jail not less than twenty days. ('17 c. 471 § 3)

[4910—]4. Size of mussels—Penalty—It shall be unlawful to take, catch or kill, offer for sale or have in possession for commercial purposes, any mussel of a size less than one and three-fourths inches in greatest dimensions, except mussels taken in the ordinary course of clamming for larger mussels, and such undersized mussels shall be immediately culled and returned to the water whence taken without avoidable injury, excepting that the so-called "pig-toes" may be retained.

Any person, firm or corporation violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of fifty dollars, or by imprisonment in the county jail not less than thirty days. ('17 c. 471 § 4)

[4910—]5. Closed areas—Orders of commission—Penalty—The state game and fish commission may from time to time and as may be required for the conservation of the mussel resources of the state, prescribe areas in any part of the state from which mussels shall not be taken for such a period as may be specified by the commission, but no such period shall exceed five years, nor shall more than one-half of the mussel producing waters of the state be closed at the same time. It shall be unlawful to take, catch, or kill mussels for commercial purposes in waters so closed.

All orders of the game and fish commission affecting mussels shall be published once in a newspaper of general circulation, published within each county containing or having on its boundary waters affected by such order.

All such orders shall take effect at the time fixed therein, but not less than thirty days after the publication thereof. The game and fish commission may extend the time within which such order shall take effect.

Any person, firm or corporation who shall violate the provisions of this section in taking, catching or killing mussels for commercial purposes in any waters of this state which have been declared closed areas by the game and fish commission shall be deemed guilty of a misdemeanor and upon conviction

thereof shall be punished by a fine of one hundred dollars, or by imprisonment in the county jail not less than sixty days. ('17 c. 471 § 5)

[4910—]6. **Licensee to make report**—On or before the thirty-first day of December of the year in which any license was issued, the holder thereof shall make a written report to the state game and fish commission on blanks furnished by them stating the total weight of mussels taken, caught or killed under such license, the names and locations of waters from which the mussels were taken and the amount received for shells sold. Upon failure to make such report, the state game and fish commission shall not issue another license to such person, firm or corporation to take, catch or kill mussels until such report shall be made. ('17 c. 471 § 6)

[4910—]7. **Moneys to whom paid**—All moneys received under the provisions of this act shall at the end of each month be paid into the general revenue fund of the state. ('17 c. 471 § 7)

[4910—]8. **Powers of commission and courts**—The state game and fish commission shall enforce the law relating to mussels and for the purposes of carrying into effect said law the commission, its executive agent and game wardens are authorized and empowered without warrant, to arrest any one violating any of the provisions of this act, and to seize mussels and devices adapted to taking, catching or killing mussels, and to inspect and examine mussels in any warehouse, boat, store, car, conveyance, vehicle, basket or other receptacle, [if] they have good cause to believe that any of the provisions of the law relating to mussels has been violated, except when it is necessary forcibly to enter a dwelling house. Any court having jurisdiction of the offense, upon receiving proof of probable cause for believing that mussels illegally taken, caught, killed or had in possession are concealed, shall issue a search warrant and cause a search of the alleged place of concealment to be made. The confiscation and sale of mussels by the state game and fish commission or by any game warden shall proceed in the manner provided by law for the sale of confiscated fish. ('17 c. 471 § 8)

[4910—]9. **Terms defined**—As used in this act the words:

(1) "Mussels" shall mean and embrace the pearly, fresh water mussel, or clam, or naiad, and the shell thereof.

(2) "Crowfoot bar" shall mean a bar of any material bearing a series of hooks designed to catch or adapted for catching mussels by the insertion of such hooks between the shells of mussels.

(3) "Dredge" shall mean any mechanism of capture which is adapted for dragging the bottom of waters and is operated with or without the aid of mechanical power, except the crowfoot bar.

(4) "Commercial purposes" shall mean and be presumed the taking, catching or killing of any mussels and having in possession of mussels, unless the contrary is proven.

(5) "Rig" shall mean one boat equipped with not more than four crow-foot bars, one boat equipped with power and one barge. ('17 c. 471 § 9)

[4910—]10. **Wisconsin licenses**—Any person duly licensed by the authorities of the state of Wisconsin to take and catch mussels from or in the waters forming the boundary line between the states of Wisconsin and Minnesota are hereby authorized to take and catch mussels from and in that portion of said waters lying and being within the territorial jurisdiction of the state of Minnesota without first having procured a license therefor from the authorities of the state of Minnesota; provided that such persons so licensed by the authorities of Wisconsin shall not take or catch any mussels within the territorial jurisdiction of the state of Minnesota at a time and in a place or in a manner otherwise prohibited by this act. Provided further that the laws of the state of Wisconsin provide for and extend a similar privilege to persons licensed thereunder by the authorities of the state of Minnesota to take and catch mussels from and in the waters lying within the territorial jurisdiction of the state of Wisconsin without a license from the authorities of the state of Wisconsin. ('17 c. 471 § 10)

CHAPTER 34

STATE PRINTING

4941. Same—How distributed—Twenty-five thousand copies of said manual shall be printed and distributed as follows:

1. Fifty copies to the president of the senate and to each member of the legislature, and fifty copies to the state historical society.
2. Five to the state university.
3. Three to the state library.
4. Two to each of the following: The library of congress, the Minnesota soldiers' home, the state normal schools, the state high schools, the public academies, seminaries, and colleges of the state, and the free public libraries thereof.
5. One to each of the following: The state institutions not hereinbefore mentioned, the elective state officers, the appointed heads of departments, the officers and employees of both houses of the legislature, the supreme and district court judges, the senators and representatives in congress from this state, and the several county auditors.
6. Each county superintendent of schools, one copy for each public school in his county.
7. There shall be retained, for distribution to members of the next succeeding legislature, two hundred seventy-five and the remainder may be disposed of as the printing commission shall deem best. (Amended '15 c. 72 § 1)

CHAPTER 35

EMPLOYMENTS LICENSED BY STATE BOARDS OR OFFICIALS

ATTORNEYS AT LAW

4946. Admission to bar—Except as hereinafter provided, no person shall be admitted to practice as an attorney, or permitted to commence, conduct, or defend any action or proceeding in a court of record to which he is not a party, either in his own name or in that of another, otherwise than after examination under rules prescribed by the supreme court. (Amended '17 c. 282 § 1)

Cited (127-150, 149+0, L. R. A. 1915B, 151).

[4946—]1. Same—Graduates from certain schools—Any student who has heretofore matriculated in the college of law of the state university shall be so admitted, upon graduation, without fee or examination, upon production of his diploma, within two years from the date thereof, and upon proof that he is an adult citizen and resident of the state, of good moral character. Upon the same terms and conditions any student who has heretofore matriculated in any college of law incorporated in this state or established by authority of its laws, and located therein, shall upon graduation be admitted to such practice, provided such college receives as students only those having the equivalent of a high school education, affords a three years' course of tuition under a corps of ten competent instructors, and operates under the written approval of the supreme court. Such approval shall be by certificate, heretofore filed with the clerk, to the effect that such college meets the foregoing requirements. When, in the opinion of the court, any such college shall have ceased to merit such approval, the court may revoke the same, and thereafter the diploma shall no longer have the effect above provided. ('17 c. 282 § 2)

4948. General duties—

Duties of attorney, purchasing from the adverse party the subject-matter of the litigation, stated (125-130, 145+809, Ann. Cas. 1915C, 951). Attorney and Client, ¶125.

Question whether defendant, an attorney, and who failed to foreclose mechanic's lien within the limitation period, was in fact employed by plaintiff, held for the jury (123-353, 143+975). Attorney and Client, ¶129(3).

The law requires the utmost good faith on the part of an attorney in his dealings with his client (162+208). Attorney and Client, ¶123(1).

Champerty (128-365, 151+125). Champerty and Maintenance, ¶5(1).

4955. Lien—An attorney has a lien for his compensation whether the agreement therefor be express or implied:

1. Upon the papers of his client coming into his possession in the course of his employment.

2. Upon money in his hands belonging to his client.

3. Upon the cause of action from the time of the service of the summons therein, or the commencement of the proceeding, and upon the interest of his client in any money or property involved in or affected by any action or proceeding in which he may have been employed, from the commencement of said action or proceeding, and, as against third parties, from the time of filing the notice of such lien claim, as provided in this section.

4. Upon money or property in the hands of the adverse party to the action or proceeding in which the attorney was employed, from the time such party is given notice of the lien.

5. Upon a judgment, and, whether there be a special agreement as to compensation, or whether a lien is claimed for the reasonable value of the services, the lien shall extend to the amount thereof from the time of giving notice of his claim to the judgment debtor, but this lien is subordinate to the rights existing between the parties to the action or proceedings.

6. The liens provided by subdivisions 3, 4 and 5 of this section may be established, and the amount thereof determined, by the court, summarily, in the action or proceeding, on the application of the lien claimant or of any person or party interested in the property subject to such lien, on such notice to all parties interested therein as the court may, by order to show cause, prescribe, or, such liens may be enforced, and the amount thereof determined, by the court, in an action for equitable relief brought for that purpose.

Judgment shall be entered under the direction of the court, adjudging the amount due and the sale of the property subjected to the lien, or some part thereof, to satisfy said amount, and directing the sheriff to proceed to sell the same according to the provisions of law relating to the sale of real estate on execution, and to make report to the court.

A certified transcript of the judgment shall be delivered to the sheriff, and shall be his authority for making the sale.

If the property so sold is real estate, the same shall be subject to redemption in the manner provided by law for redemption of real property sold on execution.

Such liens shall not affect the right or title of bona fide purchasers or incumbrancers of the property subject thereto, for value and without notice; but a duly verified notice of intention to claim such lien, specifying the property on which the lien is claimed, and the amount thereof, if under express agreement, or, if not, then the reasonable value of the services for which such lien is claimed, filed as herein provided, shall charge subsequent purchasers and incumbrancers of such property with notice of said lien from the time of such filing.

If the lien is claimed on the client's interest in real estate involved in or affected by the action or proceeding, such notice of intention to claim a lien thereon shall be filed in the office of the register of deeds in and for the county within which the same is situated. If the lien is claimed on personal property said notice shall be filed in the same manner as provided by law for the filing of chattel mortgages. (Amended '17 c. 98 § 1)

In general—The pendency of a former action, brought by other attorneys, and which was not pleaded in defense to the second action, and of which the attorneys in the second action had no notice, did not bar the lien rights of the attorneys in the second action (123-354, 151+128). Attorney and Client, ¶174.

Lien—How enforced—The lien may be enforced in a summary proceeding under § 4956 (122-87, 141+1103).

Where the client settles the case without notice to or consent of the attorney, he may enforce his lien by independent action against the defendant or by intervention proceedings in the original action (128-354, 151+128). Attorney and Client, ¶190(2).

Expenditures by attorney—The lien covers legitimate expenditures by the attorneys in the prosecution of the action, when included within the contract of employment, and is not limited to such items of costs and disbursements as might be taxed as such against the defendant (128-354, 151+128). Attorney and Client, ¶175.

Effect of settlements by client—An attorney bringing an action in this state for a special administrator for wrongful death of the intestate, a nonresident, which occurred in this state, held entitled to a lien as against a general administrator appointed by the probate court of the foreign state, who settled the cause of action with defendant (129-279, 152+413). Attorney and Client, ¶182(1).

A stipulation in the contract for compensation that the client should not settle the case without the consent of the attorney was invalid, but the lien given by this section was not impaired by a settlement made in contravention of said stipulation. A settlement by the client, made in good faith and without purpose to defraud the attorney, is conclusive as to the amount of recovery in the action (128-354, 151+128). Attorney and Client, ¶189.

A railroad company, which settles a personal injury judgment for less than its face amount, without investigating the truth of plaintiff's statement as to the name of his attorney and as to the nature of the contract for compensation, is liable to the attorney for the full amount that would be due the attorney, had the full amount of the judgment been collected (131-102, 154+962). Attorney and Client, ¶190(2).

4956. Refusal to surrender property to clients—

The court may summarily compel an attorney to pay to his client money received as the result of litigation. In proceedings under this section the court may determine the attorney's compensation, and enforce his lien therefor out of moneys withheld from the client, and may construe a contract relating to such compensation. The court, in proceedings under this section, is not confined to the consideration of affidavits, but may order a reference or send an issue to a jury (122-87, 141+1103). Attorney and Client, ¶126(1, 2), 148(1).

4957. Removal or suspension—

122-529, 142+1134. Appeal and Error, ¶979(3).

Subd. 1—124-528, 144+1134; 124-529, 144+1135.

Violation of § 8971, prohibiting advertising for divorce business, is a misdemeanor involving moral turpitude, within this subdivision (123-529, 143+1135). Attorney and Client, ¶39.

That an attorney had been convicted of a misdemeanor, and had paid a fine of \$50 eight years before, which matter was of record and well known, was not ground for disbarment or discipline (123-54, 142+929). Attorney and Client, ¶39.

Subd. 2—Where an attorney, employed under a contract entitling him to one-half of the recovery, without his client's knowledge or consent, dismissed a motion for new trial on the ground of inadequate verdict for personal injuries, it was willful misconduct, authorizing his suspension. Where an attorney secures a written contract for his compensation, a verbal agreement to pay a portion of the costs is professional misconduct, though the written contracts were purposely drawn so as to hide their champertous nature (123-54, 142+929). Attorney and Client, ¶44(1).

Getting money from his client, defendant in divorce proceedings, by falsely representing that the court ordered it as expense money, and also misappropriating money collected for his client, held ground for disbarment (122-490, 142+733). Attorney and Client, ¶44(2).

4959. Order to appear—Proceedings—

Disbarment on failure to appear to order to show cause (see 129-540, 152+1103).

Where notice was served on respondent in another state, to which he has removed, and he makes no appearance, he will be suspended until such time as he may appear and offer complete explanation of the charges against him (141+1134).

CERTIFIED ACCOUNTANTS

4964. Certificate granted; to whom—

Cited (127-150, 149+9, L. R. A. 1915B, 151).

Ability and skill required (121-296, 141+181, 45 L. R. A. [N. S.] 205, Ann. Cas. 1914C, 720). Master and Servant, ¶53.

Damages for breach of contract (121-296, 141+181, 45 L. R. A. [N. S.] 205, Ann. Cas. 1914C, 720). Master and Servant, ¶65.

PHYSICIANS AND SURGEONS

4970. Board of medical examiners—

Cited (124-151, 144+755).

4971. Examination and license—

License fees received by the secretary and treasurer of the state board of medical examiners under this act may be retained by the board, notwithstanding § 111, requiring executive officers to pay all fees and charges received by them into the state treasury (124-151, 144+755). Physicians and Surgeons, § 5(1).

4973. Same—

License fees received may be retained by the board, notwithstanding § 111, requiring executive officers to pay into the state treasury fees and charges received by them (124-151, 144+755). Physicians and Surgeons, § 5(1).

4977. Itinerant physicians, how licensed—That any physician practicing medicine surgery or obstetrics, or professing or attempting to treat, cure or heal diseases, ailments or injuries by any medicine, appliance or method, who by himself, agent or employé goes from place to place, or from house to house, or by circular letters or advertisement, solicits persons to meet him for professional treatment at places other than his regular offices or residence, shall be considered an itinerant physician. Any such itinerant physician shall, in addition to his regular license to practice medicine in this state, procure from the state board of medical examiners, a license as an itinerant physician. Any physician licensed to practice in this state desiring to secure a license as an itinerant physician, shall make an application therefor to the state board of medical examiners, setting forth in detail such information as said board may require. Said board shall examine into said application, the qualification, character and reputation of the applicant and the question as to whether the public interest will be subserved by the granting of such itinerant license and if it shall determine that such license should be granted, it shall pass a resolution to that effect, to be spread upon its minutes and upon the payment of \$300 to the secretary of said board, an itinerant physician's license shall be issued to said applicant for a period of one year from the date thereof; said secretary shall forthwith pay said license fee into the state treasury, for the use of the Board.

The board may cancel any itinerant physician's license so issued by it upon satisfactory evidence of the incompetency or gross immorality of the licensee. (Amended '17 c. 362 § 1)

4978. Same—Penalty for violation, etc.—Any person practicing medicine as an itinerant physician as defined in section 1 (4977) hereof, without first having procured such license therefor shall be guilty of a gross misdemeanor;

Provided, however, that nothing herein shall be considered to prevent any physician otherwise legally qualified, from attending patients in any part of the state to whom he shall be called in the regular course of business or in consultation with other physicians;

Provided, that nothing in this act shall preclude licensed dentists or optometrists from practice of their profession. (Amended '17 c. 362 § 1)

4979. Record of licenses—Report to secretary—

Cited (124-151, 144+755).

4980. Exemptions—

Cited (124-151, 144+755).

4981. Practicing without license—

Cited (124-151, 144+755).

[4981—]1. Division of fees prohibited—It shall be unlawful for any physician or surgeon to divide fees with, or to promise to pay a part of his fee to, or pay a commission to any other physician or surgeon or person who calls him in consultation or sends patients to him for treatment or operation. ('17 c. 365 § 1)

[4981—]2. Same—Penalty for violation—Any physician or surgeon who pays or receives any money prohibited by this act shall be punished by a fine

of not to exceed one hundred (\$100) dollars or imprisonment in the county jail not to exceed ninety (90) days. ('17 c. 365 § 2)

[4981—]3. Same—Revocation of license—In case a physician or surgeon shall be convicted of violating any of the provisions of this act, the state board of medical examiners upon a first conviction may, and upon a subsequent conviction shall revoke the license of the person so convicted, but such revocation shall be subject to the right of the person whose license has been so revoked, to appeal to the district court of the proper county on questions of law and fact. ('17 c. 365 § 3)

MIDWIVES

4983. Midwifery licenses—

Fees received under this act may be retained by the board, notwithstanding § 111, requiring executive officers to pay into the state treasury fees and charges received by them (124-151, 144+755). Physicians and Surgeons, ~~§~~5(1).

4984. Renewal, revocation, and refusal—

124-151, 144+755, and note under § 4983.

4985-4992. [Repealed.]

See § [4992—]22.

[4992—]1. Maternity hospitals and infants' homes—Definitions—Any person who receives for care and treatment during pregnancy, or during delivery or within ten days after delivery, more than one woman within a period of six months, except women related to him by blood or marriage, shall be deemed to maintain a maternity hospital. Any person who receives for care or treatment, or has in his custody at any one time, three or more infants under the age of three years, unattended by a parent or guardian, for the purpose of providing them with food, care and lodging, except infants related to him by blood or marriage, shall be deemed to maintain an infants' home. The word "person" where used in this act shall include individuals, partnerships, voluntary associations and corporations; provided, however, that this act shall not be construed to relate to any institution under the management of the state board of control, or to its officers or agents; nor to any individual who has received for care alone children from not more than one family during any period of three months. Whoever receives and cares for both women and infants as above defined shall be deemed to maintain a maternity hospital and infants' home, and shall be subject to all the provisions of this act. ('17 c. 212 § 1)

By § 23 this act shall take effect January 1, 1918.

[4992—]2. Same—Incorporation required in certain counties—No individual, partnership or association, except a corporation duly created and existing under the laws of Minnesota, and authorized by its charter so to do, shall maintain in any county containing a city of the first or second class a maternity hospital or infants' home, as defined in this act. ('17 c. 212 § 2)

[4992—]3. Same—Licenses—The state board of control is hereby empowered to grant a license for one year for the conduct of any maternity hospital or infants' home that it believes is needed and is for the public good, and that is conducted by a reputable and responsible person; and it shall be the duty of the board to provide such general regulations and rules for the conduct of all such hospitals and homes as shall seem advisable to it and not inconsistent with any of the provisions of this act. No person shall receive a woman, or child for care in any such hospital or home without first obtaining from said board a license so to do. No such license shall be issued unless the premises are in fit sanitary condition. The license shall state the name of the licensee, the particular premises in which the business may be carried on and the number of women and infants that may be boarded, treated or cared for therein at any one time; and such license shall be kept posted in a conspicuous place on the licensed premises. No greater number of women or infants shall be kept at any one time on the premises than is authorized by the license and no woman or infant shall be kept in a building or place not

designated in the license. A record of the license so issued shall be kept by the board of control, which shall forthwith give notice to the state board of health and to the local board of health of the town in which the licensee resides, of the granting of such license and the conditions thereof. The license shall be valid for one year from the date of issue. The state board of control may revoke the license when a provision of this chapter is violated, or when, in the opinion of said board, such maternity hospital or infants' home is maintained without due regard to sanitation and hygiene, or to the health, comfort or morality of the inmates thereof. The board shall note such revocation upon the face of the record of the license and give written notice of the revocation to the licensee by handing the notice to the licensee or leaving it on the licensee's premises, and shall forthwith notify the state board of health and the local board of health of the town in which the maternity hospital or infants' home is situated. ('17 c. 212 § 3)

[4992—]4. **Same—Offer to dispose of children, etc.**—No person, as an inducement to a woman to come to his place during confinement, shall in any way offer to dispose of any child, or advertise that he will give children for adoption, or hold himself out as being able to dispose of children in any manner. ('17 c. 212 § 4)

[4992—]5. **Same—Record of infants and book of forms**—The state board of control may prescribe forms for the registration and record of persons cared for in such home or hospital, and the licensee shall be entitled to receive gratuitously from the board of control a book of forms for such registration and record. Each book shall contain a printed copy of this chapter. The licensee of a maternity hospital shall keep a record, in a form to be prescribed by said board, wherein shall be entered the true name of every patient, together with all her places of residence during the year preceding admission to such hospital; the name and address of the physician or midwife who attended at each birth taking place in such hospital, or who attended any sick infant therein, and the name and address of the mother of such child; the name and age of each child who is given out, adopted or taken away to or by any person, together with the name and residence of the person so adopting or taking away such child; and such other information as the board shall prescribe. The licensee of an infants' home shall keep a record in a form to be prescribed by said board wherein shall be entered the name and age of each child received or cared for in such home, together with the names and addresses of the parents and the name and address of the person bringing the child; the name of the physician who attended any sick infant therein; the name and age of each child who is given out, adopted or taken away to or by any person, together with the name and residence of the person so adopting or taking away such child; and such other information as the board shall prescribe. ('17 c. 212 § 5)

[4992—]6. **Same—Births—Deaths**—Every birth taking place in a maternity hospital shall be attended by a legally qualified physician or midwife. The licensee shall within twenty-four hours after the birth make a written report of every woman confined and child born upon the premises to the state board of control, together with such additional information as may be required by the board. The licensee, immediately after the death in a maternity hospital or infants' home, of a woman or an infant born therein or brought thereto, shall cause notice thereof to be given to the local board of health of the town in which such home or hospital is located. ('17 c. 212 § 6)

[4992—]7. **Same—Inspection**—The officers and authorized agents of the state board of control and of the state board of health and the local boards of health of the towns in which such licensed premises are located may inspect such hospital or home at any time and examine every part thereof. The officers and agents of the state board of control may call for and examine the records which are required to be kept by the provisions of this act, and inquire into all matters concerning such hospital or home and the patients and infants therein; and the officers and authorized agents of the state board

of control shall visit and inspect such hospitals and homes at least once every six months and shall preserve reports of the conditions found therein. The licensee shall give all reasonable information to such inspectors and afford them every reasonable facility for viewing the premises and seeing the patients therein; provided, however, that no patient, without her consent, shall be required to be interviewed by an inspector or agent unless such inspector or agent is a woman or a licensed physician. ('17 c. 212 § 7)

[4992—]8. **Same—Reporting illegitimacy**—Whenever a child or a woman who within ten days has been delivered of a child, or a woman who is pregnant is received for care in a maternity hospital or infants' home, or other public or private hospital, the licensee of such maternity hospital or home, or the officer in charge of such other hospital, shall use due diligence to ascertain whether such child is legitimate, and if there is reason to believe that he is illegitimate or will be illegitimate when born, such licensee or officer shall report to the state board of control, within such [time] as said board may prescribe, the presence of such woman or child, together with such other information as the board may require. ('17 c. 212 § 8)

[4992—]9. **Same—Records to be private**—No officer or authorized agent of the state board of control, the state board of health or the local boards of health of the towns where such licensed hospitals or homes are located, or a licensee of such a hospital or home, or his agent, or any other person shall disclose the contents of the records herein provided for or the particulars entered therein, except upon inquiry before a court of law, at a coroner's inquest or before some other competent tribunal, or for the information of the state board of control, the state board of health or the local board of health of the town in which said hospital is located. ('17 c. 212 § 9)

[4992—]10. **Same—Relationship—Burden of proof**—In a prosecution under the provisions of this act or a penal law relating thereto, a defendant who relies for defense upon the relationship of any woman or infant to himself shall have the burden of proof. ('17 c. 212 § 10)

[4992—]11. **Same—Placing out—Records**—Every person permitted by law to receive, secure homes for or otherwise care for children, shall keep a record containing the names, ages and former residences of all children received; the names, former residences, occupations and character so far as known of the parents; the dates of reception, placing out and adoption, together with the name, occupations and residences of the person with whom the child is placed; the date and cause of the cancellation of any contract of indenture; the date and cause of any removal to another home; the date and cause of termination of guardianship, and a brief history of each child until he shall have reached the age of eighteen years, or shall have been legally adopted or discharged according to law. ('17 c. 212 § 11)

[4992—]12. **Same—Who may assume custody—Surrender of parental rights**—No person other than the parents or a relative may assume the permanent care and custody of a child under fourteen years of age unless authorized so to do by an order or decree of court. Except to a maternity hospital as provided by law, and in proceedings for adoption, no parent may assign or otherwise transfer to another his rights or duties with respect to the permanent care and custody of his child under fourteen years of age, and any such transfer hereafter made shall be void. ('17 c. 212 § 12)

[4992—]13. **Same—Notifying state board of control**—Whenever any person, shall place a child in a private home for the purpose of providing the child with a permanent home; and whenever a child shall have been in such a home for a longer period than six months, the person responsible for the placing of the child shall immediately notify the state board of control, giving the name and address of the child, the name of the person with whom the child has been placed, with such other information regarding the child and his foster home as may be required by the board. ('17 c. 212 § 13)

[4992—]14. **Same—Visitation of children—Transfer**—Within ninety days after the receipt of the notice provided for in section 13 [4992—13] the

state board of control shall cause the child and the home in which he has been placed to be visited by its agent for the purpose of ascertaining whether the home is a suitable one for the child; and shall continue to visit and supervise the case of such child the same as though the child were placed out by the state public school. Whenever satisfied that a child has been placed in an unsuitable home the board may order its transfer, and if said order is not obeyed within thirty days or such shorter time as may be named in the order, the board itself shall take charge of and provide for such child. ('17 c. 212 § 14)

[4992—]15. **Same—Bringing child into state for adoption—Bond—Notice to board—Reports**—No person shall bring or send into the state any child for the purpose of placing him out, or procuring his adoption, without first obtaining the consent of the state board of control, and such person shall conform to the rules of the board. He shall file with the board a bond to the state, approved by the board, in the penal sum of one thousand dollars, conditioned that he will not send or bring into the state any child, who is incorrigible or unsound of mind or body; that he will remove any such child who becomes a public charge or who, in the opinion of the board of control, becomes a menace to the community prior to his adoption or becoming of legal age; that he will place the child under a written contract approved by the board that the person with whom the child is placed shall be responsible for his proper care and training. Before any child shall be brought or sent into the state for the purpose of placing him in a foster home, the person so bringing or sending such child shall first notify the state board of control of his intention, and shall obtain from the board a certificate stating that such home is, in the opinion of the board, a suitable home for the child. Such notification shall state the name, age and personal description of the child, and the name and address of the person with whom the child is to be placed, and such other information as may be required by the board. The person bringing or sending the child into the state shall report at least once each year, and at such other times as the board of control shall direct, as to the location and well-being of the child so long as he shall remain within the state and until he shall have reached the age of eighteen or shall have been legally adopted. Provided, however, that nothing herein shall be deemed to prohibit a resident of this state from bringing into the state a child for adoption into his own family. ('17 c. 212 § 15)

[4992—]16. **Same—Sending child out of state, etc.**—Before any child is taken or sent out of the state for the purpose of placing him in a foster home, otherwise than by a parent or guardian, the person so taking or sending him shall give the state board of control such notice and information as is specified in section 15 [4992—15], and thereafter shall report to the board at least once each year and at such other times as the board may direct, as to the location and well-being of such child until he shall have reached the age of eighteen years or shall have been legally adopted. It shall be the duty of the state board of control to carry out the provisions of this section. ('17 c. 212 § 16)

[4992—]17. **Same—Written agreement with person taking child**—Every person placing a child in a foster home shall enter into a written agreement with the person taking the child, which agreement shall provide that the person placing the child shall have access at all reasonable times to such child and to the home in which he is living, and for the return of the child by the person taking him whenever in the opinion of the person placing such child, or in the opinion of the board of control, the best interests of the child shall require it. The provisions of this section shall not apply to children who have been legally adopted. ('17 c. 212 § 17)

[4992—]18. **Same—Corporations caring for children—Approval by board of control**—No association whose object embraces the care of dependent, neglected or delinquent children or the placing of such children in private homes shall hereafter be incorporated unless the proposed articles of incorporation shall have been submitted first to the state board of control. The secretary of state shall not issue a certificate of incorporation unless there shall first be filed in his office a certificate of the board of control that it has examined

the articles of incorporation, and that in its judgment the incorporators are reputable persons, that the proposed work is needed, and that the incorporation of such association is desirable and for the public good. Amendments proposed to the articles of incorporation of any such association shall be submitted in like manner to the board of control and the secretary of state shall not record such amendment or issue his certificate therefor unless there shall first be filed in his office the certificate of the board of control that it has examined such amendment, that the association is, in its judgment, performing in good faith the work undertaken by it, and that such amendment is, in its judgment, a proper one and for the public good. ('17 c. 212 § 18)

[4992—]19. **Same—Supervision by board of control**—It shall be the duty of the state board of control to pass annually on the fitness of every agency, public, semi-public or private, which engages in the business, for gain or otherwise, of receiving and caring for children or placing them in private homes. Annually at such time as the board shall direct every such agency shall make a report showing its condition, management and competency to care adequately for such children as are or may be committed thereto or received thereby, the system of visitation employed for children placed in private homes, and such other facts as the board may require. When the board is satisfied that such agency is competent and has adequate facilities to care for such children, and that the requirements of the statutes covering the management of such agencies are being complied with, it shall issue to the same a certificate to that effect which shall continue in force for one year unless sooner revoked by the board. A list of such certified agencies shall be sent by the board at least annually to all juvenile courts and to all the agencies so approved. No agency which has not received such a certificate within the fifteen months next preceding, and which certificate remains unrevoked, shall receive a child for care or placing out, or place a child in another home, or solicit money in behalf of such agency. All such agencies shall be subject to the same visitation, inspection and supervision by the state board of control as are the public charitable institutions of this state. For the purposes of this section the term agency means any individual, association or corporation. ('17 c. 212 § 19)

[4992—]20. **Same—Penalties for violations**—Every person who violates any of the provisions of this act, shall, upon conviction of the first offense, be guilty of a misdemeanor. A second or subsequent offense shall be a gross misdemeanor. ('17 c. 212 § 20)

[4992—]21. **Same—Partial invalidity**—The provisions of this act are severable one from another and in their application to the persons and interests affected thereby. The judicial declaration of the invalidity of any provision, or the application thereof, shall not affect the validity of any other provision, or the application thereof. ('17 c. 212 § 21)

[4992—]22. **Same—Laws repealed**—Sections 4050, 4985, 4986, 4987, 4988, 4989, 4990, 4991 and 4992, General Statutes 1913, and all other acts and parts of acts inconsistent with the provisions of this act are hereby repealed. ('17 c. 212 § 22)

[CHIROPODISTS]

[5021—]1. **Board of chiropody examiners and registration**—An act creating a State board of chiropody examiners and registration to regulate the practice of chiropody in the State of Minnesota, to license chiropody practitioners and to punish persons violating the provisions of this act. ('17 c. 382 § 1)

Section 18 repeals acts contravening the provisions of this act, etc.

[5021—]2. **"Chiropody" defined**—The definition of the word chiropody, shall be held to be the medical, mechanical or surgical treatment of the ailments of the human hand or foot. It shall also include the fitting or recommending of appliances, devices or shoes for the correction or relief of minor foot ailments, except the amputation of the foot, hand, toes, fingers or the use of anesthetics other than local. ('17 c. 382 § 2)

[5021—]3. **Board, how constituted and appointed—Terms—**That within thirty days after the passage of this act the governor shall appoint a state board of chiropody examiners and registration, consisting of five members who shall be resident chiropodists of good standing in their profession; one to serve for one year; one to serve for two years; one to serve for three years; one to serve for four years and one to serve for five years, and until their successors are appointed and qualified and one each year thereafter to the end that each member shall serve five years after the first appointment. ('17 c. 382 § 3)

[5021—]4. **Registration of practitioners without examination—Fees—**Within thirty days after the enactment of this act said board shall notify all persons engaged in the practice of chiropody in this state of the provisions of the act, by publication in one or more newspapers in each county and every practitioner of chiropody, twenty-one years of age or over and of good moral character who shall make application for registration before the first day of July, 1917, and who can prove to the satisfaction of the board that he was engaged in the practice of chiropody in this state January first, 1917, shall, upon payment of a fee of ten dollars, be registered without examination and shall receive in testimony thereof a certificate signed by the chairman and secretary of said board.

Application for registration shall be made upon blanks furnished by the board and shall be signed and sworn to by the applicant.

All fees received by the board shall, once a month, be paid by its secretary into the treasury of the state. ('17 c. 382 § 4)

[5021—]5. **Registration by examination—Fees—**Any person not entitled to registration as aforesaid, who shall furnish the board with satisfactory proof that he is twenty-one years of age or over and of good moral character and that he has received a diploma or certificate of graduation from a recognized school of chiropody or equivalent institution, having a minimum requirement of two years' course of at least eight months, shall, upon payment of a fee of fifteen dollars, be examined and if found qualified, shall be registered and shall receive in testimony thereof a certificate signed by the chairman and secretary of the board.

An applicant who fails to pass an examination satisfactory to the board and is therefore refused registration, shall be entitled, within one year after such refusal, to a re-examination at a meeting of the board called for the examination of applicants, upon payment of an additional fee of two dollars for each such re-examination, but two such re-examinations shall exhaust his privilege under his original application.

Any person to whom a certificate of registration is granted under the provisions of this act, shall designate himself as a doctor of surgical chiropody. ('17 c. 382 § 5)

[5021—]6. **Examinations—**Examinations shall be in the English language and shall be written, oral or clinical or a combination of two or more of the said methods, as the board may determine.

The examinations shall embrace the subjects of anatomy, physiology, chemistry, bacteriology, pathology, diagnosis and treatment, materia medica and therapeutics and clinical chiropody, but said examinations shall be so limited in their scope as to cover only the minimum requirements for chiropody education as herein provided and shall not be construed to require of the applicant a medical or surgical education.

The minimum requirement for registration of applicants under section five and six of this act, shall be based on a general average of seventy-five per cent of the subjects involved and not less than sixty per cent in any one subject. ('17 c. 382 § 6)

[5021—]7. **Penalties for violation—**Any person who shall unlawfully obtain registration under this act, whether by false or untrue statements contained in his application to the board or by presenting to said board a fraudulent diploma, certificate or license or one fraudulently obtained, shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine

of not less than one hundred or more than three hundred dollars, or by imprisonment for not less than three months nor more than one year, or by both such fine and imprisonment; and any person not being lawfully authorized to practice chiropody in this State and registered as aforesaid, who shall advertise as a chiropodist, in any form, or hold himself out to the public as a chiropodist, shall upon conviction thereof, for each offense be punished by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment for not less than three months nor more than one year, or by both such fine and imprisonment. ('17 c. 382 § 7)

[5021—]8. **Evidence of practicing**—It shall be deemed prima facie evidence of the practice of chiropody or of holding oneself out as a practitioner of chiropody within the meaning of this act, for any person to treat in any manner the human hand or foot by medical, mechanical or surgical methods, or to use the title chiropodist or registered chiropodist or any other words, or letters which designate, or tend to designate to the public that the person so treating or holding himself out to treat, is a chiropodist. ('17 c. 382 § 8)

[5021—]9. **Cancellation of registration**—The board, after hearing may, by majority vote, revoke any certificate issued by it, and cancel the registration of any chiropodist who has been convicted of violation of the provisions of section six of this act [5021—6]. Said board may also, after hearing, by majority vote, revoke the certificate and cancel the registration of any person whom the court records of any state or territory within the United States, or the federal court records, or the record of any court of jurisdiction in any foreign country show that such person has been found guilty of a criminal offense. Said board may also, after hearing, by majority vote, revoke the certificate and cancel the registration of any person whose registration was granted upon mistake of material fact. The board may subsequently, but not earlier than one year thereafter, by unanimous vote, re-issue any certificate and register anew any chiropodist whose certificate was revoked and whose registration was cancelled by the board except as hereinafter provided. ('17 c. 382 § 9)

[5021—]10. **Unprofessional conduct**—The board may, after hearing, refuse to issue a certificate to any person, or may revoke the certificate and cancel the registration of any person registered under the provisions of this act, who after investigation, shall be found by a majority vote of the board, guilty of grossly unprofessional and dishonest conduct. The words, "unprofessional and dishonest conduct," shall be held to mean within the provisions of this act.

(a) The willing betrayal of a professional secret.

(b) Having professional connection with, or lending the use of one's name to an unregistered chiropodist or having professional connection with anyone who has been convicted in court of any criminal offence whatsoever.

(c) Being guilty of offenses involving moral turpitude, habitual intemperance, or being habitually addicted to the use of morphine, opium, cocaine or other drugs having a similar effect, or for using, selling or giving away any substance or compound containing alcohol or drugs for other than legal and legitimate purposes. ('17 c. 382 § 10)

[5021—]11. **Suspension of registration**—The board may revoke or suspend for an indefinite period, but not for less than six months, the certificate of registration of any person found guilty under the provisions of section nine of this act. ('17 c. 382 § 11)

[5021—]12. **Investigation and prosecution**—The board shall investigate all complaints of violations of section six [5021—6] and nine [5021—9] of this act and shall report all violations of section 6 [5021—6] to the proper prosecuting officers. ('17 c. 382 § 12)

[5021—]13. **Registration of certificates by county clerks, etc.**—Every person to whom a certificate of registration has been issued under this act shall, within one month from the date of receipt of said certificate of registration,

submit the same to the county (city or town) clerk of the county (city or town) in which the said person has then legal residence or usual place of business and shall make oath that he is the person designated therein. Upon payment of a fee of one dollar, it shall be the duty of the county (city or town) clerk to whom such certificate is presented, to register the name and address of the person designated in the certificate, together with the date and number inscribed thereon; which record shall be open to the inspection of the public; and it shall be the further duty of the county (city or town) clerk to whom said certificate is presented, to file with the Board, within one week of such registration, a duplicate copy of the record made. ('17 c. 382 § 13)

[5021—]14. **Expenses and compensation**—Each member of the board shall receive ten dollars for every day actually spent in the performance of his duties in connection with the provisions of this act and the necessary traveling expenses actually incurred, not exceeding five cents per mile each way. The said compensation and travelling expenses and any incidental expenses necessarily incurred by the board or any member thereof, shall, if approved by the board, be paid from the treasury of the state, but only from the fees received under the provisions of this act and paid into the said treasury by the board. ('17 c. 382 § 14)

[5021—]15. **Reciprocity**—The board may accept the certificate of license of the board of registration and examination of any other state or territory or any foreign country whose standards of qualifications and requirements for practice are equivalent to those of this state on payment of the required fee of \$50.00 with the endorsement of the secretary of the state board of chiropractic examiners. ('17 c. 382 § 15)

[5021—]16. **Meaning of "board"**—The word "board," wherever used in this act shall be understood to mean the board of registration in chiropractic of the state of Minnesota. ('17 c. 382 § 16)

[5021—]17. **Exemption of physicians and others**—This act shall not apply to the commissioned surgical officers of the United States army, navy or marine hospital service when in the actual performance of their official duties, nor to any physicians duly registered under the general laws of the state nor to any legally registered chiropractic of another state taking charge of the practice of a legally registered chiropractic of this state temporarily, during the latter's absence therefrom upon the written request, to the board, of said registered chiropractic of this state. ('17 c. 382 § 17)

OPTOMETRISTS

5022-5028. [Repealed.]

See § [5028—]12.

[5028—]1. **Board of optometry**—The State Board of Optometry shall consist of five qualified optometrists appointed by the governor, each for the term of three years, or such part thereof as will provide for the expiration of the terms of two members January 1, 1916, one member January 1, 1917, and two members January 1, 1918, and until their successors qualify.

Vacancies in such board shall be filled by like appointment for unexpired terms. ('15 c. 127 § 1)

[5028—]2. **Rules and regulations—Taking testimony**—Said Board of Optometry shall make such rules and regulations, not inconsistent with the law, as may be necessary for the proper performance of its duties. Any member of the board may, upon being duly designated by the board, or a majority thereof, administer oaths or take testimony concerning any matter within the jurisdiction of the board. ('15 c. 127 § 2)

[5028—]3. **Officers—Meetings**—The board shall elect from among its members a president and may adopt a seal.

A secretary or assistant may be employed who need not necessarily be a member of said board.

For the purpose of examining applicants for licenses to practise optometry, the board shall meet at least once each year in St. Paul and may hold other meetings at its pleasure. ('15 c. 127 § 3)

[5028—]4. Compensation of members and secretary, etc.—Each member shall receive from the funds of the board five dollars (\$5.00) a day for actual services, three cents a mile for necessary travel and allowance for necessary expenses of attending meetings, not to exceed two dollars and fifty cents (\$2.50) a day.

For clerical services the secretary shall receive such compensation as the board may deem just and proper, such compensation to be not more than four hundred dollars (\$400.00) per year. The board may employ an attorney and other necessary assistants to aid in the enforcement of the provisions of this act, the attendant expense to be met from the funds of the board. The secretary shall keep a record of all proceedings, including therein the name of every applicant for examination or registration, which record shall be open to public inspection. ('15 c. 127 § 4)

[5028—]5. Definition of practicing optometry—Prohibited acts—Any person shall be deemed to be practicing optometry within the meaning of this act who shall display a sign or in any way advertise himself as an optometrist, or who shall employ any means for the measurement of the powers of vision or the adaptation of lenses for the aid thereof, or who shall in the sale of spectacles or eyeglasses or lenses, use in the testing of the eyes thereof, lenses other than the lenses actually sold.

It shall be unlawful for glasses to be vended as merchandise except from permanently located and established places of business.

It shall be unlawful for any person to engage in the practice of optometry without first procuring and filing for record a certificate of registration as a licensed optometrist pursuant to this subdivision. ('15 c. 127 § 5)

[5028—]6. Persons entitled to practice—Requirements for registration—Fees—Revocation of certificate—The persons entitled to practice optometry in Minnesota who are not already registered shall be:

Every person of the full age of twenty-one years who furnishes the board with satisfactory evidence of

(a) His age and moral character;
(b) That he possesses the knowledge essential to the practice of optometry;

(c) Having served an apprenticeship of not less than two years under a practicing optometrist acceptable to the board, or shall be a graduate of an optometry school or college approved by this board, requiring an attendance of not less than one year's course;

(d) Having passed satisfactorily an examination by the board as to his qualifications for the practice of optometry, upon the completion of which he shall receive from said board a license certificate entitling him to practice. Any person desiring to be examined by said board must fill out and swear to an application furnished by the board, and must file the same with the secretary of said board at least two weeks prior to the holding of an examination which the applicant is desirous of taking.

The applicant shall pay to the board a fee of twenty dollars (\$20.00) before examination and five dollars (\$5.00) upon the issuance of certificate. In the event of failure on the part of a candidate to pass the first examination, he may within fifteen months have another trial; upon the payment of five dollars (\$5.00) additional.

Any applicant may be registered and given a certificate of registration if he shall present a certified copy or certificate of registration or license which has been issued to said applicant by any other state, where the requirements for registration shall be deemed by said board to be equivalent to those of this act; provided that such state shall accord a like privilege to holders of certificates of said board.

The fee for registering such applicants shall be fifteen dollars (\$15.00).

The board upon a hearing of which the accused shall have a ten days' notice, may revoke the certificate of any person under conviction of crime or shown to be grossly incompetent, afflicted with contagious or infectious disease or who employs misrepresentation, fraud or house-to-house canvassing in order to fit or sell glasses, or who has been guilty of habitual drunkenness for six months immediately preceding the accusation. After one year upon application and proof that the disqualification has ceased, the board may reinstate such person. ('15 c. 127 § 6)

[5028—]7. **Certificate to be filed with clerk of district court—Fees**—The holder of every such certificate of registration shall file the same for record with the clerk of district court in the county where he resides, and after record shall display it conspicuously at his place of business. Upon removal to another county he shall there in like manner file his certificate before engaging in business therein.

Such clerk's fee shall be fifty cents (50c) for recording and one dollar (\$1.00) for a certified copy. A failure on the part of the holder to comply with any of the foregoing provisions for six months after issuance of the certificate shall forfeit the same. ('15 c. 127 § 7)

[5028—]8. **Annual fees**—Before April first in each year, every authorized optometrist shall pay to the board a fee of two dollars (\$2.00), in default of which, the board, upon a hearing and after twenty days' notice, may revoke the certificate of any optometrist so in default; but the payment of such fee at or before the time of hearing, with such additional sum, not exceeding five dollars (\$5.00), as may be fixed by the board, shall excuse the default. The board may collect such fee by suit. ('15 c. 127 § 8)

[5028—]9. **Fees, how used—Annual report**—All fees collected under this subdivision shall be received and held by the secretary and devoted to the uses of the board. The secretary shall give such bond as the board shall from time to time require. Before the first Monday in January, annually, the board shall report to the governor its proceedings, and the items of its receipts and disbursements. ('15 c. 127 § 9)

[5028—]10. **Penalty for violation**—Every person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, the minimum punishment whereof shall be a fine of fifty dollars (\$50.00) and not more than one hundred dollars (\$100.00), or confinement in the county jail for not less than thirty (30) days nor more than ninety (90) days. ('15 c. 127 § 10)

[5028—]11. **Partial invalidity**—In case for any reason any paragraph or any provision of this act shall be questioned in any court of last resort and shall be held by such court to be unconstitutional or invalid the same shall not be held to affect any other paragraph or provision of this act. ('15 c. 127 § 11)

[5028—]12. **Laws repealed**—That Sections 2320, 2321, 2322, 2323, 2324, 2325 and 2326 of the Revised Laws of 1905 and all amendments to said sections or any of them are hereby repealed. ('15 c. 127 § 12)

PHARMACISTS

5046. **Punishment for sale by other than druggist**—No person, not a registered pharmacist or a dealer employing and keeping such a pharmacist in active charge of his place of business, shall retail, compound or dispense drugs, medicines or poisons, or keep or conduct a place for retailing, compounding or dispensing drugs, medicines, or poisons, or falsely assume or pretend to the title of a registered pharmacist. No registered pharmacist or other person shall permit the compounding or dispensing of prescriptions or the vending of drugs, medicines, or poisons in his place of business, except under the supervision of a registered pharmacist or assistant. Every person violating any provision of this section shall be guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars, except

in cases where the death of a human being results from such violation, when the person offending is guilty of a felony. (Amended '15 c. 62 § 1)
Cited (125-529, 147+273).

STALLIONS

5071. Enrollment—License—Record—

Cited (124-374, 145+32).

CHAPTER 36

PROTECTION AGAINST FIRE AND REGULATION OF HOTELS AND RESTAURANTS

HOTELS, THEATERS AND OTHER BUILDINGS

5105. Classification of buildings—

126-149, 148+110; note under § 5108.

5107. Same—Class two—

126-149, 148+110; note under § 5108.

5108. Same—Class three—For each five thousand feet of area, or fraction thereof, covered by a building in class three, there shall be provided one outside standpipe, as described in § 5107, and one non-combustible ladder or stairway for each twenty persons, or fraction thereof, that such building accommodates above the first story. (2368)

(Provided, that this law shall not apply to flats, apartments or tenements designed for single families in buildings not over four stories high, where such flats, apartments or tenements are each substantially surrounded by solid brick, stone or concrete walls and where two stairways are provided on opposite sides of such buildings from each flat, apartment and tenement, such stairways not to be more than sixty feet apart;

Provided, further, that said act shall not apply to flats, apartments or tenements designed for single families in buildings not over three stories high, where the outside walls of such buildings are of brick, stone or concrete construction and where such flats, apartments or tenements are provided with two stairways on opposite sides of such buildings from each flat, apartment or tenement; such stairways, however, not to be more than fifty feet apart.) (Amended '15 c. 292 § 1)

1915 c. 292 § 1 amends section 5108 of the General Statutes of 1913, by adding at the end thereof the words above included in parenthesis.

A building held to be one within this section, so that a failure to provide a fire escape rendered the landlord liable for the death of a subtenant, resulting from the burning of the building (126-149, 148+110). Landlord and Tenant, ¶169(7).

A subtenant, in attempting to descend from a ladder which did not come within 20 feet of the ground, while the building was on fire and there was no other mode of escape, was not guilty of contributory negligence as a matter of law (126-149, 148+110). Landlord and Tenant, ¶169(11).

A ladder, within the contemplation of this section, must be one that offers a reasonably safe escape when other ways are closed, and a ladder which does not come within 20 feet of the ground does not comply with the statute (126-149, 148+110). Health, ¶32.

[5108—]1. **Same—To what cities applicable—**This law shall only apply to cities of the first class not governed by a home rule charter. ('15 c. 292 § 2)

See note under § 5108.

5123. Same—Expenses, how paid—On or before the 15th day of each month the hotel inspector shall certify to the state auditor the amount due to his deputy as necessary expenses for the preceding month, giving the items of such expenses; also the items and amounts of all expenses necessarily incurred by him in the performance of his duties, including the cost of blanks, stationery, postage and travel; also the amount due the stenographer as com-

pensation for the preceding month, and such salaries and expenses being duly audited shall be paid by the state out of the appropriation therefor. ('13 c. 569 § 11, amended '15 c. 165 § 1)

[MOVING PICTURES]

[5128—]1. **Cinematograph, etc., to be enclosed in booth**—No cinematograph or any other apparatus for projecting or showing moving pictures, save as excepted in section 12 of this act [5128—12], which apparatus uses combustible films more than ten inches in length, shall be set up for use or used in any building, or in any place of human assemblage, unless such apparatus be enclosed in a booth or room of the dimensions and of one of the constructions hereinafter specified. ('17 c. 466 § 1)

By § 30 the act takes effect September 1, 1917.

[5128—]2. **Size of booth**—Such booth shall be not less than six feet in height and shall be sufficiently large to permit the operator to walk freely on both sides and back of the machine and apparatus installed therein. ('17 c. 466 § 2)

[5128—]3. **Booth, how constructed**—(a) If the booth or enclosure is constructed of brick, tile or concrete it shall have walls, floor and ceiling or roof not less in thickness than eight inches except that if reinforced concrete is used the thickness need be only four inches.

(b) If the booth or enclosure is constructed of cement or plaster on expanded metal, or of sheet metal, asbestos or other approved fire-resisting material, such booth shall be constructed with an angle-iron framework, the angle-irons to be not less than one and one-half inches wide by one-quarter of an inch thick, the adjacent members to be joined firmly with not less than three-sixteenth inch steel plates to which each adjoining angle or tee-iron shall be riveted or bolted. The angle members of the framework shall consist of four outside horizontal members at top and bottom, four corner uprights and intermediate uprights on sides and ends and intermediate members on roofs spaced at least every two feet, but where expanded metal is used the studs and members may be made of folds in said metal.

Cement or plaster on expanded metal shall be at least two inches thick and grooves or binders for gravity doors shall be securely fastened to the metal studding.

Sheets of steel or galvanized iron then used as a covering for the frame, shall be of not less than No. 20, U. S. gauge, and sheets of asbestos board or other approved fire-resisting material shall be at least one-quarter of an inch in thickness. The fire-resisting material shall completely cover the sides, tops and all joints of such booth.

Sheet metal shall be so cut and arranged that joints shall always come over a member and shall be over-lapped and bolted or riveted to such member by bolts or rivets spaced not more than three inches on centers.

Asbestos boards or their equivalent shall be so cut and arranged that vertical joints between boards shall always come over an angle or tee-iron, to which such boards shall be securely fastened by means of proper bolts and nuts spaced not more than six inches on centers.

The floor space covered by the booth shall be covered with fire-resisting material not less than three-eighths of an inch in thickness. The entire booth shall be insulated so that it will not conduct electricity to any other portion of the building. ('17 c. 466 § 3)

[5128—]4. **Doorways and openings**—The doorway to such booth shall be not less than two or more than three feet in width nor more than five feet, ten inches in height. The door thereto shall consist of an angle frame of approved fire proof material covered with sheets of such fire-resisting material as may be used for the construction of a booth. It shall close against a substantial metal rabbet and shall be so arranged as to close automatically when not open for ingress or egress.

There shall be two openings in the booth for each machine, one for observation by the operator and one for operation of the machines, and other

necessary opening for spot lights. These openings shall not exceed twelve inches by fourteen inches in dimensions and each shall be provided with a gravity door constructed of asbestos board or of sheet metal of not less than No. 14 U. S. gauge. Such doors normally shall be held open by a fine combustible cord fastened to a fusible link which melts at 160 degrees Fahrenheit and which shall be located within the booth directly above the moving picture machine. Doors shall be arranged to slide closed when released and when closed, shall overlap their respective openings two inches on each side. ('17 c. 466 § 4)

[5128—]5. **Non-combustible material**—All shelves, furniture and fixtures within the booth shall be constructed of non-combustible material. ('17 c. 466 § 5)

[5128—]6. **Ventilation**—Each booth shall be provided with a ventilating inlet on at least one side, said inlet to be approximately fifteen inches long and three inches high, the lower side thereof to be not more than three inches above the floor level.

There shall also be an opening or vent in the ceiling or upper part of the side wall with a minimum cross-sectional area of fifty square inches, which shall communicate by means of a fire-proof pipe or flue with the chimney or outer air. ('17 c. 466 § 6)

[5128—]7. **Portable booths permitted under certain conditions**—Where motion pictures are exhibited daily in one place for not more than one month, or in educational or religious institutions or in bona fide social, scientific, political or athletic clubs, not oftener than three times a week, a portable booth may be substituted for the booth described in section three of this act. Such booth shall have a height of not less than six feet and an area of not less than twenty square feet and shall be constructed of asbestos board, sheet steel of not less than No. 24 U. S. gauge, or some other approved fire-proof material. Such portable booth shall conform to the specifications of section four of this act with reference to windows and doors but need not so conform with reference to vent flues except that there shall be an opening for ventilation in the top of the booth not less than ten inches in diameter with a metal sleeve at least eighteen inches in height, provided with a ventilating cap, attached thereto.

The booth may be of the folding type but shall be so constructed that when assembled, it shall be rigid and all joints shall be so tight that flames cannot pass through them. The base of the booth shall have a flange extension outward on all four sides and so constructed that the booth may be securely fastened to the floor. Provided, however, that any fire proof booth in use when this act goes into effect, which is in substantial compliance with the provisions of the foregoing sections may be continued in such use so long as the same is reasonably safe, anything to the contrary herein contained, notwithstanding. ('17 c. 466 § 7)

[5128—]8. **Picture machines and electrical equipment, how installed**—All moving picture machines and all electrical equipment used in showing moving pictures shall be installed, constructed and operated in the following manner:

(a) All electrical equipment shall be constructed and installed in substantial compliance with the provisions of the national electrical code.

(b) Each picture machine shall be securely fastened to the floor.

(c) No films shall be exposed in the booth at the same time other than the one in process of transfer to or from the machine or from the upper to the lower magazine or in process of rewinding. A special metal case, made without solder, shall be provided for each film and when the film is not in the magazine or in process of rewinding, it shall be kept in such case. No material of a combustible nature shall be stored within any booth except films needed for one day's operation.

(d) Each machine shall be equipped with magazines for receiving and delivering films during the operation of the machine. Such magazines shall be constructed of metal of not less than No. 20 U. S. gauge with slots for the

delivery and reception of films only large enough for films to pass in and out, and with covers so arranged that such slots can be instantly closed. No solder shall be used in the construction of these magazines. The doors to such magazines shall be provided with spring hinges and latches. A shutter shall be placed in front of the condenser so arranged as to close automatically when the film is stationary. ('17 c. 466 § 8)

[5128—]9. **Smoking and use of matches prohibited**—Neither smoking nor the keeping nor use of matches shall be permitted in any booth, room, compartment or enclosure where a motion picture machine is installed. ('17 c. 466 § 9)

[5128—]10. **Age and qualifications of operator**—No person shall operate any motion picture machine unless he shall be at least eighteen years of age, and the state fire marshal or one of his deputies under his direction, whenever he shall deem it necessary, may examine any operator of a motion picture machine as to his fitness to operate such a machine and if he shall find any such operator incompetent, he shall notify such operator thereof, in writing, and thereafter such operator shall not be permitted to operate any such machine in this state until such incompetency shall have been removed to the satisfaction of the state fire marshal. ('17 c. 466 § 10)

[5128—]11. **Electric wiring and lights**—All electrical wiring shall be brought into the booth in metal conduits. All lights within the booth shall be provided with wire guards and reinforced cord shall be used for pendant purposes. If the house lights are controlled from within the booth, an additional emergency control must be provided near the main exit and kept at all times in good condition. ('17 c. 466 § 11)

[5128—]12. **Foregoing sections not to apply, when**—The foregoing sections of this act shall not apply to the use and operation of any miniature motion picture apparatus which uses only an enclosed incandescent electric lamp and approved acetate of cellulose or slow burning films, and is of such construction that films ordinarily used on full sized commercial picture apparatus, cannot be used therewith. ('17 c. 466 § 12)

[5128—]13. **Exits for audience room**—Every audience room open to the public in which moving picture exhibitions are given, shall be provided with at least two exits on the main floor, one of which shall be in the front and the other in the rear of such room, both leading by safe passage to unobstructed outlets in a street or alley. Where balconies or galleries are used by the audience, one exit therefrom to the street or alley must be provided for each two hundred seats or fraction thereof installed. All exit openings shall be not less than three feet in width and six feet and eight inches in height. Exit doors must open outward and shall be so arranged that they can be readily opened from the inside without any keys or special effort and shall never be locked when the room is open to the public. Exits must be of easy and safe access to a street or alley, and passageways, stairways and inclines leading from exits to streets or alleys must be kept well lighted at all times and be not less than five feet wide. ('17 c. 466 § 13)

[5128—]14. **Electrical exit signs, etc.**—Each exit shall have over it on the auditorium side an illuminated sign bearing the word "Exit" in letters not less than six inches high. Lights used in marking exits or lighting passageways or stairways or inclines leading from them, shall be on a separate circuit or ahead of the main line switch and cutout. Such lights shall not depend upon or be exclusively controlled by wires, switches or fuses located in the booth or enclosure containing the motion picture machine but shall be controlled from the ticket office or from some point of easy access on the main floor. All exit, passage and stairway lights shall be kept lighted during all times when such audience room is open to the public. ('17 c. 466 § 14)

[5128—]15. **Style of seats, etc.**—All seats occupied by the audience, except in lounges and boxes shall be fixed and immovable; provided, however, that in public halls used only partially for moving picture theatre or assembly purposes, they may be fastened together in rows of not less than four

seats without being fastened to the floor. In buildings hereafter equipped as moving picture theatres and in theatres wherein the seats are renewed or rearranged there shall not be more than seven seats in any one row opening upon one main aisle and not more than fourteen seats in any one row opening upon two main aisles and all rows of seats shall be separated by a space not less than thirty inches from back to back. ('17 c. 466 § 15)

[5128—]16. **Aisles, size of—To be free from obstruction**—All aisles shall lead directly to exits without steps or obstructions and shall be not less than three feet in width, and in buildings hereafter built or equipped as moving picture theatres such aisles shall be not less than three feet in width at the point most distant from the exit and shall increase in width toward the exit at least two inches to each ten running feet of length. All exits and all aisles must be kept clear and unobstructed at all times during the performance. ('17 c. 466 § 16)

[5128—]17. **Hand fire extinguishers to be provided**—Every such audience room shall be supplied with at least two approved hand fire extinguishers one of which shall be inside the booth and within easy reach of the operator, and one of which shall be in an accessible place near the main entrance to such room. In addition thereto there shall be at least one such extinguisher in each balcony or gallery used by the audience and at least one such extinguisher in the room where the furnace or heating plant is located when such plant is in the same building with the theatre. ('17 c. 466 § 17)

[5128—]18. **Machines to be above level of grade of street**—No motion picture machine shall be installed, maintained or operated in any audience room open to the public, which is below the grade of the street on which it is located or above the second floor above the street level. ('17 c. 466 § 18)

[5128—]19. **Certain sections not to apply to churches, schools, clubs or halls, etc.**—The provisions of sections 13, 14, 15, 16, 17, and 18 of this act [5128—13 to 5128—18] shall not apply to churches, schools, clubs or halls where moving picture exhibitions are given only upon occasions and solely for religious, benevolent, educational or scientific demonstrative purposes. Provided, however, that no exhibitions shall be given where said sections are not complied with unless there shall be present a duly authorized member of the local fire department whose duty it shall be to keep all exits and aisles free from obstructions and to procure compliance with all laws for the prevention of fire; and it shall be the duty of the chief of the local fire department to direct the attendance of some member of his department upon request of any person intending to give such an exhibition. ('17 c. 466 § 19)

[5128—]20. **Power of state fire marshal**—Whenever the provisions of this act are not conformed to, or where defects of installation exist, the state fire marshal, or his deputy under his direction, is hereby empowered to cut off all electric current from said room or building at once, and no person shall restore the supply of electric current to such room or building until the defects are remedied and until all provisions of this law are complied with. ('17 c. 466 § 20)

[5128—]21. **Operation, etc., without license from state fire marshal—Application, investigation and fees—Permit in certain cases**—On and after the first day of September, 1917, it shall be unlawful for any person to operate a moving picture machine or to exhibit moving pictures in any building, theatre or hall to which the public is admitted or in any other place of public entertainment or amusement within this state unless the owner, lessee, occupant or agent of said place has been licensed by the state fire marshal to use such place for such purpose. The application shall be made and presented at least thirty days prior to the date when the license is desired to go into effect, to the end that the fire marshal may make the necessary investigation and inspection before the license issues. The license fee shall be five dollars for the year and each application shall be accompanied by the license fee. Every license shall expire one year from the date of its issuance. The state fire marshal upon application therefor shall furnish to any person desiring a license an application blank upon which the applicant shall state the

full name and address of the applicant or applicants and if it be a corporation, the names and addresses of the principal officers thereof, whether such applicant be the owner, lessee, occupant or agent of the building for which a license is desired, the location and a full description of the property and the building and the room within the building to be used or proposed to be used for the exhibition of moving pictures, and such other information as may be required to be contained therein by the state fire marshal. Every application shall be verified by the applicant for such license and such verified application shall be prima facie proof of the facts therein stated.

Upon receipt of such application, the state fire marshal shall make such investigation as he shall deem necessary and shall grant a license to such applicant unless it appears to him that the provisions of this act are being violated or are about to be violated. The license thus granted shall not be transferable to any other building, room or place than that stated in the license. The state fire marshal, in his discretion and under such regulations and conditions as he may prescribe therefor, may grant a permit for the exhibition of moving pictures in an unlicensed building, and without a formal license therefor, for not more than seven consecutive days when such exhibitions are to be given solely for religious, benevolent, educational or scientific purposes. No license shall be granted except after examination by the state fire marshal or his authorized deputy or agent, provided, however, that the state fire marshal may issue a temporary license upon the verified application herein provided for, which shall be good until revoked for cause or until a permanent license is substituted therefor. There shall be deducted from the fee for such permanent license a part thereof proportionate to the unexpired portion of the year for which the temporary license was granted. ('17 c. 466 § 21)

[5128—]22. **Posting license**—Such license shall be posted in a conspicuous place within the theatre and a picture thereof shall be exhibited upon the screen at the commencement of each performance. ('17 c. 466 § 22)

[5128—]23. **Penalty for violation**—Any person who shall operate a moving picture machine or who shall cause moving pictures to be exhibited in violation of any of the provisions of this act, and the owner, lessee, occupant or agent of any building who permits it to be used for the exhibition of moving pictures in violation of any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished for the first offense, by a fine not exceeding twenty-five dollars and costs of prosecution, or if such fine be not paid, then by imprisonment in the county jail for a period not exceeding ten days; for the second offense, he shall be punished by a fine not exceeding fifty dollars and cost of prosecution, or if such fine be not paid, then by imprisonment in the county jail for a period not exceeding thirty days, and for a third offense or any subsequent offense he shall be punished by a fine not exceeding one hundred dollars and cost of prosecution, or by imprisonment in the county jail for a period not exceeding ninety days, or by both such fine and imprisonment. ('17 c. 466 § 23)

[5128—]24. **Fire marshal to enforce provisions, etc.**—It shall be the duty of the state fire marshal to enforce the provisions of this act and to inspect and examine all moving picture shows within this state, at least, once a year. ('17 c. 466 § 24)

[5128—]25. **Fire marshal and deputies may inspect during reasonable hours**—**Revocation of license**—The state fire marshal or his deputy under his direction may enter any moving picture theatre or show or place where moving pictures are being exhibited, at any reasonable time for the purpose of determining whether the provisions of this act are being complied with. If he shall find that any provisions hereof are being violated, he shall notify the licensee in writing, stating wherein such licensee is at fault and if such violations continue beyond a time within which such violations can be reasonably corrected he shall cause such license to be revoked and cancelled. ('17 c. 466 § 25)

[5128—]26. **To report to county attorney for prosecution**—Whenever the state fire marshal shall find a moving picture show which is being operated without a license, he shall communicate such fact, together with any evidence he may have, to the county attorney of the county in which such moving picture show is located, and it shall thereupon be the duty of such attorney to cause the arrest and prosecution of the offender. ('17 c. 466 § 26)

[5128—]27. **License fees and fines to be paid into state treasury**—All money collected under this act, whether in license fees or penalties, shall be paid into the state treasury for the benefit of the state fire marshal fund and may be used in the prosecution of the work of the department. ('17 c. 466 § 27)

[5128—]28. **Local regulations not abrogated**—Provided, however, that in municipalities having ordinances relating to the regulation and installation and operation of moving picture machines, and containing additional regulations for the safe and proper installation and operation of such machines, nothing herein shall be construed to abrogate such local regulations, but the jurisdiction of the local authorities in such cases shall be additional and subordinate to the jurisdiction and authority of the state fire marshal as hereby prescribed. ('17 c. 466 § 28)

[5128—]29. **Liberal construction—Partial invalidity**—It is hereby declared that this act is necessary for the public safety, health, peace and welfare, is remedial in nature, and shall be construed liberally, and shall not be declared void for the reason that any particular section or provision thereof may be in contravention of the constitution. ('17 c. 466 § 29)

STATE FIRE MARSHAL

5136. **Witnesses, etc.—Summons—Compensation—Investigation, how conducted—Contempt—**

Cited (131-118, 154+750).

5137. **Disobedience, how punished—**

Cited (125-224, 146+353, 51 L. R. A. [N. S.] 1017).

5140. **Buildings to be destroyed, repaired or altered—Order to repair, etc.—Penalty**—The state fire marshal may condemn and by order direct the destruction, repair or alteration of any building or structure which by reason of age, dilapidated condition, defective chimneys, defective electric wiring, gas connections, heating apparatus or other defect, is especially liable to fire and which building or structure, in the judgment of said state fire marshal, is so situated as to endanger life or limb or other buildings or property in the vicinity. In case the order requires the repair of a building, the owner, lessee, or other person upon whom rests the duty to keep the structure in repair and upon whom such order is served, shall make such repairs as thereby directed, and the order may direct that the structure be closed and not further used or occupied until such repairs are made. Any person who shall wilfully disobey the order directing the closing of such building pending the making of such repairs shall be guilty of a misdemeanor. (Amended '17 c. 469 § 1)

1917 c. 469 § 1 amends this chapter by striking out §§ 5140-5146 and inserting in lieu thereof the sections numbered 5140, 5140-A, 5141-5146.

5140-A. **Exits to be opened, etc.**—Whenever the state fire marshal, upon inspection, shall find a building of such construction and use that the exits and means of egress already provided do not afford reasonably safe escape in case of fire for the number of people customarily within, he may order such exits to be opened and such means of escape to be provided as, in his judgment, are reasonably necessary to eliminate the danger arising therefrom. ('17 c. 469 § 1)

5141. **Form of order—Enforcement**—The order shall be in writing, shall recite the grounds therefor and shall be filed in the office of the clerk of the district court of the county in which the building or structure so ordered to be altered, repaired or demolished is situated, and thereupon all further pro-

ceedings for the enforcement thereof shall be had in said court. (Amended '17 c. 469 § 1)

See note under § 5140.

5142. Order, how served—A copy of the order filed in accordance with the preceding section, together with a written notice that the same has been so filed and will be put in force unless the owner or occupying tenant shall file with the clerk of said court his objections and answer thereto within the time specified in the next succeeding section, shall be served upon the owner of the building or structure so directed to be altered, repaired or demolished, and if there be a tenant occupying the building, then also upon such occupant, which service shall be made upon such owner, and tenant if there be one, personally, either within or without the state; but if the whereabouts of such owner is unknown and the same cannot be ascertained by the state fire marshal in the exercise of reasonable diligence, then upon his filing in the office of the clerk of the district court his affidavit to this effect, service of said notice upon such owner may be made by publishing the same once in each week for three successive weeks in a newspaper printed and published in the county in which such building or structure is located and by posting a copy thereof in a conspicuous place upon said building or structure, and the service so made shall be deemed to be complete upon the expiration of said publication period. Proof of service of said notice shall be filed in the office of the clerk of the district court within five days after the service thereof. (Amended '17 c. 469 § 1)

See note under § 5140.

5143. Objections and answer of owner, etc.—Power of district court—The owner of any building so condemned or any lessee upon whom such notice and order are served, within twenty days from the date of such service as herein provided, may file with the clerk of the court and serve upon the state fire marshal by registered mail written objections to said order in the form of an answer denying the existence of any of the facts therein recited which he desires to controvert. If no answer is so filed and served, the owner and all other persons in interest shall be deemed to be in default, and thereupon the court shall affirm the order of condemnation and direct the state fire marshal to proceed with the enforcement thereof; but if an answer be filed and served as herein provided, the court shall hear and determine the issues so raised and give judgment thereon as herein provided. (Amended '17 c. 469 § 1)

See note under § 5140.

5144. Order for hearing—Trial and judgment—The court, upon application of the state fire marshal, shall make its order fixing a time and place for such hearing, which place may be at any convenient point within the judicial district and which time shall be within ten days from the date of the filing of the answer, or as soon thereafter as may be; and upon such trial the order of condemnation shall be prima facie evidence of the existence of the facts therein recited. If upon such trial the order shall be sustained, judgment shall be given accordingly and fixing a time within which the building shall be altered, destroyed or repaired, as the case may be, in compliance with such order, but otherwise the court shall annul and set aside the order of condemnation. (Amended '17 c. 469 § 1)

See note under § 5140.

5145. Failure to comply with order—Marshal to demolish or repair—Sale of salvage materials, etc.—If the owner or other party in interest shall fail to comply with the order of condemnation of a structure as hereinbefore provided, within the time fixed thereby, or within the time fixed by the court in case a trial is had therein, then the state fire marshal shall proceed to cause such building or structure to be demolished, or repaired, in accordance with the direction contained in such order, and where a building is demolished in accordance with such order he may sell and dispose of the salvage materials therefrom at public auction upon three days' posted notice. He shall keep an accurate account of the expenses incurred in carrying out the order, and shall

credit thereon the proceeds of such salvage sale, if any, and shall report his action thereon with a statement of said expenses or the balance thereof, the expense incurred by him and the amount, if any, received from such salvage sale, to the court for approval and allowance, and thereupon the court shall examine, correct if necessary and allow said expense account, and by its order shall certify the amount so allowed to the county auditor for collection; and the owner or other party in interest shall pay the same within thirty days thereafter with twenty-five per cent penalty added thereon, and in default of such payment the auditor shall enter said expense on the tax lists of said county as a special charge against the real estate on which said building is or was situated and the same shall be collected in the same manner as other taxes and the amount so collected, including the penalty thereon, shall be paid into the state treasury and credited to the fund of the state fire marshal; if the amount received as salvage shall exceed the expense incurred by the state fire marshal, the court shall direct the payment of the surplus to the owner or the payment of the same into court for its use and benefit. (Amended '17 c. 469 § 1)

See note under § 5140.

5146. Combustibles, explosives, etc.—The state fire marshal, the chief assistant fire marshal or any deputy fire marshal who finds [in] any building or upon any premises any combustible or explosive material, rubbish, rags, waste, oils, gasoline or inflammable matter of any kind endangering the safety of such building or property or the occupants thereof or the occupants of adjoining buildings, shall order such materials removed or such dangerous condition corrected forthwith. Such order shall be in writing and directed generally to the owner, lessee, agent or occupant of such building or premises, and any such owner, lessee, agent or occupant upon whom such notice shall be served who shall fail to comply therewith within twenty-four hours thereafter, unless the order prescribes a longer period within which it may be complied with, shall be guilty of a misdemeanor and said material may be removed or dangerous condition corrected, at the expense of the owner of such building and premises or the person upon whom such service is so made, or both, and said state fire marshal may maintain all necessary actions for the recovery thereof. (Amended '17 c. 469 § 1)

See note under § 5140.

5151. Expenses, how paid—Tax on insurance companies—Special fund—For the purpose of maintaining the department of state fire marshal and paying all the expenses incident thereto, every fire insurance company doing business in the State of Minnesota, excepting Town Insurance Companies, Farmers' Mutual Fire Insurance Companies and Township Mutual Fire Insurance Companies, shall hereafter pay to the state treasurer on or before March 1, 1914, and annually thereafter, a tax upon its fire premiums or assessments or both, as follows:

A sum equal to three-eighths of one per cent of the gross premiums and assessments, less return premiums, on all direct business received by it in this state, or by its agents for it, in cash or otherwise, during the preceding calendar year, including premiums on policies covering fire risks only on automobiles, whether written under floater form or otherwise, provided, however, that this act shall in no way affect the tax due March 1, 1913, and the payment thereof. In the case of a mutual company, the dividends paid or credited to members in this state shall be construed to be return premiums. The money so received into the state treasury shall be set aside as a special fund and is hereby appropriated for the maintenance of such office of state fire marshal and the expenses incident thereto. The state shall not be liable in any manner for the salary of said fire marshal, his chief assistant, deputies, clerks and other employes or for the maintenance of the office of fire marshal or any expenses incident thereto, and the same shall be payable only from the special fund provided for in this section. ('13 c. 564 § 23, amended '15 c. 341 § 1)

CHAPTER 37

NOXIOUS WEEDS

5167. Weeds declared noxious—Each of the plants mentioned in this section is hereby declared to be a noxious weed and a common nuisance. No person owning, occupying or controlling land shall permit:

1. Any wild mustard, wild oats, cocklebur, burdock, or tumble mustard to go to seed thereon.

2. Any Canada thistle, annual and perennial sow thistle, oxeye daisy, or quack grass to go to seed thereon, or for more than two successive years, to reproduce itself thereon by crowns, underground stems, or buds.

3. Any French weed to produce seeds thereon for more than four successive years.

4. Any Russian thistle to grow or remain thereon at all. (Amended '17 c. 394 § 1)

[5167—]1. **County weed inspector—Term, bond, salary, duties and assistants—Duty of county auditor—Complaint—Duties of dean of agricultural college and superintendent of state farm school or experimental stations, etc.**—Upon the petition of ten per cent of the voters of any county, the county board may appoint a suitable person to act as county weed inspector for a term of not less than four months in each calendar year; such person so appointed shall give bond to the county in a sum not to exceed one thousand dollars and shall receive as his compensation a salary of one hundred dollars per month and be paid his necessary traveling expenses. It shall be the duty of said county weed inspector to inspect the real estate in said county for the purpose of ascertaining the facts as to the presence of Canada thistle and annual and perennial sow thistle thereon and report the result of his inspection in that regard to the county board weekly, by filing a written report in duplicate with the county auditor of said county. The county auditor shall, within five days, notify the chairman of the town board of each town, the mayor of any city, or the president of any village council in said county as to the portion of said report that may affect lands in their respective towns, cities and villages. The county auditor shall also forward the duplicate copy of said report to the dean of the agriculture college of the university of Minnesota within five days after the filing of the same with him. Said county weed inspector shall when he deems the necessity exists, make written complaint as provided for in section 5169, General Statutes of Minnesota, 1913. The receipt by a chairman of a town board, mayor of a city or president of a village council of notice from the county auditor as hereinbefore provided, shall operate the same as a written complaint under said section 5169, and require the performance by said chairman, mayor or president of the duties and acts by them to be performed under the provisions of chapter 37, General Statutes of Minnesota, 1913, insofar as Canada thistle and annual and perennial sow thistle are concerned.

The county board may hire and employ and pay such assistant county weed inspectors as it may deem necessary to assist and work under the direction of the county weed inspector. It shall be the duty of the dean of the agriculture college of the university of Minnesota, the superintendent of any state farm school or experimental station, county weed inspector or assistant county weed inspector to furnish and disseminate, as may be deemed necessary, proper information and instruction relative to the most feasible manner in which Canada thistle and annual and perennial sow thistle may be exterminated. In case the county weed inspector is only employed for a portion of a year, the time of his employment shall be during the time between May 1 and November 1 of any such year.

This act shall not in any way abridge the provisions found in sections 5167–5173, both inclusive, General Statutes of Minnesota, 1913, but shall be considered, insofar as that intent is manifest, additional powers, duties and obligations upon the officers and persons referred to. ('17 c. 394 § 2)

5168. Noxious weeds in highways—Duty of abutters—For all purposes of this chapter, the half of any road, street or alley, lying next to the lands abutting thereon, shall be considered a part of such land. No person or corporation owning, occupying or controlling land shall permit any noxious weed, or any white daisy, snap-dragon, or toad-flax, sow-thistle, sour dock, yellow dock or other weeds or grasses to produce seed upon such adjoining half of the highway, street or alley. It shall be the duty of every person or corporation owning, occupying or controlling land abutting on any public highway, street or alley, to cut or destroy, or cause to be cut or destroyed, all noxious weeds and grasses herein specifically named, and other weeds and grasses upon such adjoining half of the public highway, street or alley at least twice each year, to-wit; once between July 1st and July 15th, and once between October 1st and October 15th of each year. (Amended '17 c. 229 § 1)

5169. How and by whom enforced—Notice—It shall be the duty of the road overseers of each organized township, and the mayor of [or] president of the council of each municipality, to give the notices provided for in this chapter, and cause the provisions hereof to be enforced. He shall inspect or cause to be inspected every public highway, street and alley within his district, or municipality, as the case may be, as soon as may be, and not later than ten days after the time herein fixed for cutting or destroying of the weeds and grasses herein mentioned, and shall cause written notice to be served upon all persons or corporations not complying with the provisions of this chapter to comply with the provisions thereof and to cut the grasses and weeds herein specified, within six days after such notice is served. (Amended '17 c. 229 § 2)

5170. Notice, upon and how served, etc.—Such service shall be upon the occupant, if any there be, otherwise upon the owner or person in charge of the land, and shall be personal and by copy wherever practicable. If there be no person within the county upon whom service can properly be made, of which the certificate of the officer serving such notice shall be prima facie evidence, then notice shall be sent by mail, postage prepaid, to the person who last paid tax upon the land, the name and address of such taxpayer to be furnished by the county treasurer of the county in which such land is located. (Amended '17 c. 229 § 3)

CHAPTER 38

INSECTS AND PLANT DISEASES

[5175—]1. Trees, plants or shrubs from which diseases or insects may spread—Powers and duties of state inspector of nurseries, etc.—Appraisal—Duty of carriers—Penalty—When any tree, shrub or plant, not itself diseased or infested, which is a host for any organism inducing a plant disease, new to or not heretofore widely prevalent or distributed within or throughout this state, or host for any destructive insect, new or not heretofore widely prevalent or widely distributed throughout this state is situate within three thousand feet of any tree, plant or shrub which is infested with any such organism or insect, the state inspector of nurseries may for the purpose of preventing the spreading of such organism or insect, cause such tree, plant or shrub not itself so diseased or infested, to be destroyed as hereinafter provided.

(a) No tree, plant or shrub not itself diseased, shall be ordered destroyed without the approval in writing of the order therefor signed by a majority of

a committee consisting of the experiment station entomologist; president of the Minnesota Horticultural Society and by the director of the Minnesota Agricultural Experiment Station and by the plant pathologist of the Minnesota Agricultural Experiment Station if a plant disease is concerned, or without opportunity being given to owner of such trees, plants or shrubs for an open hearing if he objects to such action on the part of the inspector.

(b) When the destruction of any such trees, plants or shrubs is determined upon the state inspector of nurseries shall by notice in writing, approved as provided for in subdivision "A" of this section, direct the owner or lessee of the land on which such plants, trees or shrubs are situate to destroy as many of such plants as the state inspector may deem necessary, within such period of time as shall be therein specified, provided, however, such tree, plant or shrub shall not be required to be destroyed until the value thereof shall have been appraised as hereinafter provided.

(c) Immediately upon the issuance by the state inspector of nurseries of an order for the destruction of any trees, plants or shrubs, other than trees especially valuable for lumber, he shall designate three or more persons to be selected from the list of appraisers hereinafter provided for in subdivision H of this section, to appraise the value of such trees, plants or shrubs.

(d) In case the order issued by the state inspector of nurseries directs the destruction of any tree, or trees chiefly valuable for timber purposes, the same shall be appraised as hereinafter provided for by the state forester, the assistant state forester or such suitable employé of the state forester's department as shall be designated in writing by the state forester.

(e) It shall be the duty of the appraisers so appointed to forthwith take and subscribe an oath to fairly and honestly determine the value of the trees, plants or shrubs so ordered to be destroyed and determine the fair cash value thereof at the place and in the condition the same may be in at the time of the issuance of the order. The appraisers so appointed shall receive as compensation for their services such sum, not to exceed six dollars per day, as shall be fixed by the state inspector of nurseries, for each day necessarily employed in the performance of their duties, together with the necessary traveling expenses and hotel bill, incurred in the performance of their duties provided, however, that no officer or employé of the state shall receive any compensation for the performance of the duties herein imposed, but shall be reimbursed for his actual and necessary expenses. Such compensation and expenses, when approved by the state inspector of nurseries shall be audited and paid by the state auditor from the appropriation made for the purposes of this act.

(f) The appraisers so appointed shall forthwith give notice to the owner or lessee of the land on which the trees, plants or shrubs ordered to be destroyed are situate of the time when they will visit the premises for the purpose of making their appraisal. Such owner or lessee shall at the time so specified, be given a full opportunity to be heard on the question of the value of the trees, plants and shrubs so ordered to be destroyed. The appraisers shall thereupon determine, as hereinbefore provided, the cash value of such trees, plants and shrubs and make and file with the state inspector of nurseries a report in duplicate of their appraisal and shall also give a copy thereof to the owner or lessee. The said reports shall each be signed by the appraiser. One of the copies thereof filed with such inspector shall be attached to a voucher which voucher after approval by the state inspector of nurseries, shall be transmitted to the state auditor for audit and after allowance by him the amount therein specified shall be paid from the money appropriated for the purposes of this act, to the owner of the trees, plants or shrubs ordered to be destroyed. The state inspector of nurseries shall attach to the voucher approved by him a certificate that the trees, plants and shrubs so appraised and specified in the voucher and appraisal have been destroyed in accordance with the order. The oath of the appraisers hereinbefore specified shall be attached to and filed with the copy of the appraisers' report filed with the state inspector of nurseries.

(g) Upon the delivery to him of the appraisers' report the owner or lessee of the land on which the trees, plants or shrubs ordered to be destroyed are situate, shall forthwith destroy the same in the manner directed by the state inspector of nurseries, and within the time as specified in subdivision B, and any owner or lessee who fails so to do within a period of five days after the expiration of said time specified in subdivision B shall be guilty of a felony and in addition to such criminal liability, the state inspector of nurseries may, after the failure of the owner or lessee for said five days to so destroy the same, cause the said trees, plants or shrubs to be destroyed at the expense of the owner, in the manner and as provided for in section 1 of this act [5175—1], and such expense in such case shall be deducted from the amount payable to the owner. Provided that said owner, lessee or representative shall not be guilty of a felony if within five days after receiving the notice for the destruction of such trees, plants and shrubs as provided for in subdivision B he shall notify said state inspector of nurseries in writing that he prefers to have said state inspector of nurseries destroy such trees, plants and shrubs as provided in this section.

(h) It shall be the duty of the executive board of the state horticultural society and the director of the experiment station each to furnish to the state inspector of nurseries a list of five practical horticulturists residing in several parts of the state who possess knowledge of the value of trees, plants and shrubs, from each of which the appraising committee is chosen.

(i) The state inspector of nurseries is hereby authorized and empowered to prohibit by proclamation the importation into this state of any plant, tree or shrub which has been grown or propagated in any state, province or country or in any place where it shall be determined by the said state inspector of nurseries after due investigation, that there exists and is prevalent to a dangerous extent, White Pine Blister Root or any other plant disease or destructive insect new to Minnesota which is liable to or capable of spreading to and infecting the plants, trees and shrubs of this state and which may be carried and transported to and into this state on or in trees, plants and shrubs there grown. It shall be the duty of said state inspector of nurseries upon the making and promulgation by him of any such proclamation to forthwith mail a copy thereof to each certified nurseryman and to each railroad company doing business in this state and to publish a copy thereof in a newspaper published at the city of Duluth and at the city of St. Paul, and any person, firm or corporation or common carriers which shall after thirty days from the reception of said notice introduce or transport into this state any tree, plant or shrub grown or propagated in the territory described in such proclamation, shall be guilty of a gross misdemeanor and in case the offender be a corporation, shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars for each shipment so introduced into this state. ('13 c. 206, amended '17 c. 361 § 1)

5181. Same—Dealers and florists—Certificate—Dealers and florists not owning nurseries and shipping by post, freight, express or otherwise may obtain from the state entomologist a special certificate, in order to comply with the federal and state laws. Such certificate will be granted only upon stock purchased from an inspected nursery or upon foreign stock inspected in Minnesota.

Provided that, before such certificate is granted, the dealer or florist requesting the same shall furnish a sworn affidavit that he will buy and sell only stock which had been duly inspected by an official state inspector and that he will maintain with the state entomologist a list of all sources from which he secures his stock. ('13 c. 206 § 7, amended '15 c. 244 § 1)

CHAPTER 39

BOUNTIES AND REWARDS

5196. Horse stealing—

A mule is not a "horse" within the meaning of this section (129-520, 152+866). Rewards, ~~8~~.

A village constable, who without a warrant aids in making an arrest outside his village for a horse theft committed outside the village, may participate in a reward offered for the arrest and conviction of the offender (134-67, 158+796). Rewards, ~~11~~.

5203. Method of payment—Additional bounties by towns—The four feet of striped and gray gophers and woodchucks, and both front feet of pocket gophers and the heads and rattles of rattle snakes, and the bodies of birds and reptiles other than rattle snakes shall be produced to the chairman of the town board of the town where they were killed, and if he shall be satisfied that they were killed within the designated territory and by the person producing them, he shall certify to the county auditor the number of each kind so killed. Such certificate shall be issued by the chairman of the town board at the end of each month and shall show the names of all persons entitled to bounty for the preceding month, the number of each kind of animals, reptiles and birds so killed and the amount of bounty that each person is entitled to receive. The county auditor shall issue thereon a warrant on the county treasurer payable to the chairman of the town board who issued such certificate, for the full amount of the bounty allowed by law according to such certificate, and upon receipt of such warrant the chairman shall pay the proper persons the bounty allowed by law for the preceding month.

The chairman to whom such feet, heads and bodies and rattles are produced shall immediately cause such heads, feet, bodies and rattles to be destroyed and shall cause the removal of one foot from each bird.

Any town board may also offer a bounty for the destruction of the animals, birds and reptiles described in the title of this act, and adopt rules for the payment thereof which bounty so offered by a township shall be in addition to any bounty which may be offered by the board of county commissioners. (Amended '15 c. 357; '17 c. 290 § 1)

CHAPTER 40

PUBLIC LANDS

SALES BY AUDITOR

5204. School lands—Minimum price—Pine lands, etc.—The minimum price of school lands shall be five dollars per acre, and all sales thereof shall be within the county in which said lands are situated; provided, that pine lands shall not be sold until the timber thereon has been sold according to the provisions of this chapter; and, when such timber has been sold and removed, the land may be appraised and sold as in this chapter provided. Not more than one hundred thousand acres of school lands shall be sold in one year. Provided, further, however, that where patent has been issued by the federal government to any school land as above defined previous to 1864, and the taxes thereon have been paid for a period of at least fifty years, that then and in such event the state auditor may in his discretion cause such amount of such taxes to be applied upon the minimum price of \$5.00 per acre as above provided, as he may deem proper, in order that the minimum sales price of the land may be so reduced as to make it saleable. (Amended '17 c. 76 § 1)

5210. Terms of payment—Interest—The terms of payment on the sale of all state lands other than pine lands shall be as follows: On those which are chiefly valuable for the timber thereon, the purchaser shall pay at the time of sale the value of such timber, and on other lands fifteen per cent of the purchase price. In all cases, including pine lands from which the timber has been sold, the balance of the purchase price shall be payable at any time within forty years, at the option of the purchaser, with interest at the annual rate of four per cent., payable on June 1 in each year. (Amended '15 c. 13 § 1)

Cited (135-408, 161+156).

[5217—]1. Resurveys—Whenever a tract of land has been sold by the state of Minnesota, according to the United States survey, and the state auditor is of the opinion that an injustice has been done the purchaser because of an incorrect survey, he may cause a re-survey thereof to be made by a competent surveyor, who shall thereafter prepare a plat showing the correct acreage of each subdivision so re-surveyed to be filed in the state auditor's office and in the office of the register of deeds of the proper county, and the said auditor is hereby authorized to call in such land certificates as are affected by the re-survey and to issue new ones in lieu thereof showing the correct acreage, giving full credit for all payments of principal and interest which had previously been made. ('17 c. 197 § 1)

5227. Certificate of sale—Default—Resale—

Cited (135-408, 161+156).

5229. Assignment—Extensions of payment—

A quitclaim deed by the holders of a certificate of sale conveys their equitable interest in the land (135-408, 161+156). Public Lands, ~~§~~135(5).

An assignment of a certificate, with the assignee's name left blank, is a nullity until the name of the grantee is inserted therein; and a purchaser of the interest of such assignee has no right to judgment against the original assignor for breach of contract to transfer the certificate (135-449, 161+155). Public Lands, ~~§~~135(5).

The assignment is a conveyance of real estate within § 6813, and, when recorded, protects a good-faith purchaser against a prior unrecorded assignment (135-408, 161+156; 135-449, 161+155). Public Lands, ~~§~~54(10), 138.

[5229—]1. Certain assignments validated—That all assignments of school land certificates of real property within this state, made during the month of October, 1911, wherein a married woman has assigned such school land certificate, and the real property therein described, direct to her husband, shall be, and the same are hereby declared to be legal and valid, and the record of such assignments heretofore actually recorded in the office of the register of deeds of the proper county, shall be in all respects legal and valid, and such assignments, and the record thereof, shall have the same force and effect in all respects, for the purpose of notice, evidence and otherwise, as may be provided by law in regard to assignments and conveyances in other cases. Provided that the provisions of this act shall not apply to any action or proceedings now pending in any of the courts of this state. And provided further, that this act shall not impair vested rights heretofore acquired by third parties in such property. ('15 c. 267 § 1)

5230. Effect of certificate—Record—

The holder of a certificate of sale of public land is the equitable owner, and an assignment of the certificate is a conveyance under § 6813, and a purchaser in good faith of a certificate, who places his assignment of record, is protected by the recording acts against a prior unrecorded assignment (135-408, 161+156; 135-449, 161+155). Public Lands, ~~§~~54(10), 138.

[5236—]1. Payment after time limit authorized in certain cases, etc.—That the treasurer of the State of Minnesota is hereby authorized to receive payment, up to and including December 31, 1918, of the principal on all state land certificates where the time for payment of the said principal has expired or will expire on or before July 31, 1917, and the governor of the State of Minnesota is hereby authorized to execute patents covering those tracts on which all demands due the state have been paid in full as hereinbefore provided. ('17 c. 7 § 1)

[5236—]2. **Same—Interest**—That interest on the principal remaining unpaid on July 31, 1917, shall run thereafter at the rate of ten (10) per cent per annum until the said principal is paid in full. ('17 c. 7 § 2)

5237. Patents—

Where, after a good-faith purchaser of a certificate of sale of state land has become the owner of the equitable title by recording his assignment, the holder of a prior unrecorded assignment pays the balance due the state and surrenders the certificate, and receives a patent, the patent cannot be canceled and the legal title revested in the state at the suit of the equitable owner; but the patentee may be adjudged to hold the legal title in trust for the equitable owner, and may be required to convey it to him upon payment of the amount so paid to the state (135-408, 161+156). Public Lands, ~~6~~138.

[5245—]1. **Investment secretary for board of investment**—There is hereby created an investment secretary, who shall be the secretary of the state board of investment (called in the Constitution board of commissioner), and who shall perform the duties of his office under the direction of the state board of investment; provided, however, that the responsibility for the safe investment of all state trust funds, under its jurisdiction, shall remain with the board. ('17 c. 271 § 1)

[5245—]2. **Same—Salary—Assistants**—The annual salary of the secretary shall be \$3,000. The board of investment may provide necessary assistants and fix their compensation. The total disbursement for such assistants shall not exceed \$2,500.00 per annum. ('17 c. 271 § 2)

[5245—]3. **Same—Powers and duties**—The said secretary shall, under the direction of said board of investment, have general supervision of the investigation of applications for loans, the negotiation of new investments, examination of securities, and the records of municipalities applying for loans, and such other work relative to the trust funds of the state as shall be required by the said board of investment. The secretary shall report to the board of investment all relevant facts in connection therewith. ('17 c. 271 § 3)

[5245—]4. **Same—How appointed—Term, etc.**—The investment secretary shall be appointed by the state board of investment. The first appointee shall hold office until January 1, 1920. Thereafter the term of the secretary shall be three years and until his successor shall be appointed and qualified. The board of investment may remove the secretary at its discretion. Vacancies caused by resignation or removal shall be filled by the board of investment for the unexpired term. ('17 c. 271 § 4)

[5245—]5. **Same—Assistants—Bonds**—The secretary shall, with the approval of the board of investment, appoint and dismiss all assistants. The said board shall require the secretary and, in its discretion, may require his assistants to give a bond payable to the state in such sum as the board shall determine. ('17 c. 271 § 5)

[5245—]6. **Same—Quarters—Expenses**—Said secretary shall be provided with suitable quarters, office furniture and supplies, and be allowed necessary expenses when traveling on official business. All expense accounts of the secretary shall be approved by the board of investment, and when so approved, shall be audited and paid as provided by law. ('17 c. 271 § 6)

[5245—]7. **Same—Custody of bonds and securities**—The state treasurer shall continue to have the custody of the bonds and securities belonging to the trust funds of the state, but the secretary shall have access thereto in the presence of a representative of the state treasurer, during the usual office hours of the treasury department. ('17 c. 271 § 7)

[5251—]1. **Sale of bonds of other states—Reimbursement of funds**—That the state board of investment is hereby authorized to sell the bonds of other states, or any part thereof, now held in the trust funds of the state, for a sum less than the cost to such funds, should the board of investment deem it for the best interests of the state to make such disposition of said bonds. In order that the principal of such funds, as derived from the sales, or other disposition of said lands, or other property, granted or intrusted in this state for educational purposes, or for purposes of internal improvement, shall not be im-

paired, the said board of investment is hereby authorized to make up any deficit, or loss, which may accrue by reason of the sale of said bonds, from the fund hereinafter created, or from the profit derived from former sales of bonds of said trust funds, as shown upon the books of the state auditor, or partly from the said fund and partly from said profits. ('17 c. 464 § 1)

[5251—]2. Same—Fund to meet prospective loss—Bonus on bonds purchased from municipalities—The board of investment is hereby authorized to create a fund to meet any prospective loss arising from the sale of such bonds, or any portion thereof, by charging a bonus upon the bonds of municipalities of the state purchased by said investment board, not exceeding one-fourth of one per cent per annum for the period for which the loan is to run. Such bonus shall be deducted from the amount of such loan when made and credited to such fund. The board of investment may, in its discretion, exempt loans to school districts from the provisions of this section. Municipalities making application to the state for loans under this act are hereby authorized to pay such bonus upon approval by the governing board of such municipalities. ('17 c. 464 § 2)

[5251—]3. Same—Loss from sale of bonds, how paid—Whenever the board of investment shall sell any of said bonds and a loss to the trust funds shall accrue therefrom, the amount of such loss shall be paid from the fund provided for by section 2 [5251—2], if said fund is created by the board of investment, if the amount in said fund, or the anticipated receipts thereto, be sufficient to meet such loss; if insufficient the deficiency shall be paid from the profits of former sale of bonds of said trust funds. ('17 c. 464 § 3)

[5251—]4. Same—Anticipating receipts—The board of investment may anticipate the receipts to accrue to the fund authorized by section 2 [5251—2]. For the purpose of temporarily providing for any loss in the sale of said bonds, pending the collection of the bonus provided for herein, the auditor and treasurer are hereby authorized to transfer from the revenue fund, upon a certificate of the state board of investment, a sum sufficient to cover such loss. When there are sufficient funds the amount of such transfer shall be repaid to the revenue fund. ('17 c. 464 § 4)

[5251—]5. Same—Appropriations—There is hereby appropriated from the revenue fund such sum as may be necessary to carry out the provisions of this act, not to exceed \$100,000; and there is also appropriated from the profits of the former sale of bonds, as shown upon the books of the state auditor, such sum as the board of investment may deem necessary to expend for the purposes of this act. ('17 c. 464 § 5)

[5256—]1. Lease for certain purposes—The State Auditor may at public or private vendue and at such prices and under such terms and conditions as he may prescribe, lease any unsold school, university, internal improvement, and swamp land, for the purpose of taking and removing sand, gravel, clay, rock, marl, peat, and black dirt therefrom for storing thereon ore, waste materials from mines or tailings from ore milling plants, and for building or garden sites, and for other temporary uses that shall not result in any permanent injury to the land; provided that no such lease shall be made for a term to exceed one year, except in the case of leases of lands for storage sites for ore, waste materials from mines or tailings from ore milling plants, which may be made for term not exceeding ten years; provided further that all such leases shall be made subject to sale and leasing of the land for mineral purposes under legal provisions. All money received from leases under this act shall be credited to the fund to which the land belongs. ('15 c. 192 § 1, amended '17 c. 31 § 1)

[5257—]1. Revolving fund for clearing school and swamp land—The sum of \$100,000 is hereby set apart and appropriated from the fund derived from the sale of school and swamp lands. The said sum of money is to be used as a revolving fund and as contemplated by the amended section 2 of article 8 of the Constitution of the State of Minnesota in clearing unsold school and swamp land. ('17 c. 164 § 1)

[5257—]2. Same—Auditor to have charge of investment and expenditure—The state auditor shall have the charge of the investment and expenditure of the moneys hereinbefore appropriated. ('17 c. 164 § 2)

[5257—]3. Same—State land improvement board—The governor shall appoint a state land improvement board of three members, who shall serve without salary, but whose expense shall be paid. This board may be consulted at any time by the auditor and shall, when any land is to be improved under contract, or when any land improved under this act is to be sold, be consulted, and give their approval in writing. ('17 c. 164 § 3)

[5257—]4. Same—Auditor to have charge of improvements, etc.—Engineers, etc.—The state auditor shall have charge of the improvements of all public lands and of the administration of this act. He shall appoint such engineers, agricultural experts, and other employes as shall be necessary for the administration of this act and determine their compensation; provided that the governor may on recommendation of the auditor require any expert work necessary in the administration of this act to be performed under the direction of the auditor by employes of other state bureaus, departments and institutions. ('17 c. 164 § 4)

[5257—]5. Same—Improvements, where made, etc.—The auditor shall, from time to time, determine the townships within which the improvement of state lands shall be made and he shall at all times give preference to those lands which, in his judgment, can most successfully be used at the time for agricultural purposes; provided that unless the state land improvement board shall decide otherwise, and consent in writing, no contract shall be let for an improvement involving less than the equivalent of one section of state land within the limits of any township, unless and until the state shall have no land in such quantity which, in the judgment of the auditor, is suitable for improvement under this act. ('17 c. 164 § 5)

[5257—]6. Same—Extent and character of improvements, how determined—The auditor shall determine the extent of the improvements to be made on any area, the character of the improvements to be as provided in this act; provided that not more than five acres shall be cleared on each forty-acre tract and the total cost of the improvements on any area improved shall not exceed \$300.00 on each forty (40) acre tract. ('17 c. 164 § 6)

[5257—]7. Same—Contract, how let, etc.—The work of making any improvements upon state lands, authorized by this act, shall be done under contract by the lowest responsible bidders. Contracts may be let for different classes of work separately or combined, or for different tracts in the same selected area separately or combined. The contractor may be paid for his work either on its completion or from time to time during its progress as the state auditor shall determine; provided that no payment shall be made until a competent inspector appointed by the auditor shall have examined the work and shall have certified that the work was done well and fully justifies the payment. Contracts shall be let under such regulations, terms and conditions as the state auditor, with the advice and consent of the state land improvement board, may determine. ('17 c. 164 § 7)

[5257—]8. Same—Cost, how apportioned—The actual cost of the improvement of any selected area, and a proper proportion of the cost of the administration of this act, shall be apportioned in equal portions to the forty-acre tracts upon which any such improvement is made, to be repaid to the state as hereinafter provided; provided that the cost of administration to be so charged shall include only the expenses actually incurred by reason of this act and shall include no charges for the general administration of state lands as otherwise provided for by law. ('17 c. 164 § 8)

[5257—]9. Same—Lands, how sold—Agreement of purchaser—Lands improved under this act shall be sold as are other state lands, provided, that the cost of improvements apportioned to any tract shall be paid for by the purchaser of such tract as a sum independent of the purchase price of the land itself, and provided further that every purchaser of a tract so improved shall

sign an agreement in writing that he will establish his residence upon such tract within eighteen months of the date of purchase, that he will cultivate and further improve it in a husbandlike manner, and that he will so maintain his residence and so cultivate and improve the land until the cost of improvements apportioned to that tract are paid to the state in full. Such agreement shall be a condition of the sale and its breach shall terminate the contract of sale, unless within three months after notice given by the state auditor, residence is established on the land purchased, and unless such residence is maintained and the other conditions agreed to be performed for the period herein provided. Provided, however, that the condition in said contract as to actual continuous residence on said land may be waived by the state auditor when because of the death of the purchaser or for other good cause arising after the establishment of such residence he believes such waiver will be just and equitable to all concerned. ('17 c. 164 § 9)

[5257—]10. Same—Price of land and cost of improvements, how paid—Interest—Lien—On the sale of any lands improved under this act the purchaser shall pay at the time of sale a sum equivalent to 15% of the purchase price of the land, exclusive of improvements, which sum shall be received by the state auditor in part payment of the cost of such improvements, in lieu of the part payment of the purchase price of the land provided for in Section 5210, General Statutes 1913, and the same shall be turned into the revolving fund herein provided for. The purchase price of the land, exclusive of improvements, shall be payable at any time within forty years at the option of the purchaser, as provided in section 5210, General Statutes of 1913. The balance of the cost of such improvements shall be payable twenty-five (25%) per cent in two years from date of purchase, twenty-five (25%) per cent in three years from date of purchase, twenty-five (25%) per cent in four years from date of purchase, and twenty-five (25%) in five years from date of purchase. The purchaser shall have the privilege of paying any larger sum at any time. Interest at four (4%) per cent per annum shall be collected annually on all accounts remaining unpaid. The state shall have a first lien upon the land for the interest and unpaid principal of the cost of such improvements. ('17 c. 164 § 10)

[5257—]11. Same—Revolving fund, how credited, etc.—As soon as any tract of land improved under this law shall have been sold or disposed of under contract of sale with agreement on the part of the purchaser to pay for such improvements, as provided, in this act, the state auditor shall credit to the revolving fund the principal amount contracted to be paid for such improvements by the purchaser. Such amount when collected in whole or in part shall thereupon become a part of the revolving fund provided for by this law, and may again be expended for the purpose of carrying out this act. It shall be a first lien on the interest of the person holding the certificate or other title to such land. ('17 c. 164 § 11)

TRESPASS ON STATE LANDS

5258. Damages—Penalty—Presumption—

This act is not violative of Const. art. 4 § 27, providing that no law shall embrace more than one subject, which shall be expressed in its title (128-300, 150+912). Statutes, §=117(1).

A complaint alleging that one cut timber on state lands without a permit required by R. L. 1905 § 2442 states a cause of action in trespass, though words equivalent to "wrongfully" or "willfully" are not used; and a holder of a permit to cut timber of not less than a specified size is a trespasser in cutting timber of a less size (128-300, 150+912). Public Lands, §=16.

TIMBER LANDS

[5269—]1. State appraiser—The state auditor is hereby empowered to appoint one or more employees to be known as state appraiser. Whenever it is necessary to appraise state lands under the terms of existing law the state auditor shall appoint as such appraiser on the part of the state land commissioner or state auditor, one of the state appraisers duly qualified as herein

provided, who shall except as herein otherwise provided, hereafter perform the duties heretofore devolved upon state land examiners or timber estimators. ('17 c. 162 § 1)

Section 6 repeals inconsistent acts, etc.

[5269—]2. **Same—Duties**—The duties of such state appraiser shall be to estimate and appraise timber upon all state lands; to make valuations of lands suitable for agricultural purposes; to check scale timber cut from state lands in trespass either situated upon state lands or removed therefrom; to check-scale any scale of timber cut on state land; to make check scales by the stump and top or any other method of timber removed from state lands; and to perform such other duties as may be assigned to him by the state auditor. Nothing contained in this act, however, shall be construed to in any way amend the provisions of title 1, chapter 38, General Statutes 1866, or any act amendatory thereto relating to the appointment of appraisers by officials other than the state auditor. ('17 c. 162 § 2)

[5269—]3. **Same—Oath of**—Each such state appraiser shall before entering upon the duties of his office take and subscribe an oath before a person qualified to administer oaths, that he will faithfully and impartially discharge his duties as appraiser according to the best of his ability, and that he is not interested directly or indirectly in any of the state lands or materials improvements thereon, and has entered into no combination to purchase the same or any part thereof, which said oath shall be made a part of the bond as hereinafter provided for. ('17 c. 162 § 3)

[5269—]4. **Same—Bond—Powers and duties—Arrest of trespassers—Badge—Report, etc.**—At the time of the appointment of any such state appraiser he shall give a bond to the state in a penal sum of not less than \$5,000 conditioned for the faithful performance of his duties, which bond shall be approved by the attorney general, and together with the oath as hereinbefore provided for, be filed in the office of secretary of state. Such bonds shall be paid for out of the general land, timber, swamp or contingent fund of the auditor of the state.

Every such state appraiser is hereby authorized to arrest any person found trespassing, or to have trespassed, upon state lands and deliver him to the sheriff of the county, and such state appraiser shall immediately enter a complaint before a court of competent jurisdiction in said county charging the person so arrested with such trespass, and the person so charged shall be arraigned and given a hearing on such complaint.

Such state appraiser shall wear when upon duty a badge of office to be designated and provided by the state auditor.

It is hereby declared a misdemeanor for any person not a duly appointed and acting state appraiser to wear a badge or to impersonate or claim to be a state appraiser.

Whenever an appraisal or valuation is made upon lands suited for agricultural purposes, such state appraiser shall place an estimate and valuation of any timber thereon, and make a separate report thereof; such report shall be made from his field notes made on the land and be by him entered in his own hand in a book kept for that purpose, and shall be made a part of the record of the state auditor's office, such entry shall be dated when made and sworn to upon the record at the same time the state appraiser shall file in the state auditor's office all plats and field notes made by him, and affix his signature to each said plat and to each said page of the field notes. Such records shall show that said state appraiser was actually upon the land when such estimate and valuation was made.

No such report shall embrace more than one section or fractional section of land according to the government survey thereof, and shall show the amount of timber upon each forty acre tract or subdivision; provided, however, that as ownership may appear to each subdivision of land so appraised in the various trust funds of the state, so shall all appraisements, sales, and accountings therefor be done according as such title may appear as of record in the office of the state auditor; and provided further, that where appraisals,

sales, and accountings heretofore made have not been made in accordance with this provision, the state auditor is authorized to make such apportionment to the various funds as he may deem equitable and just to each such fund, and such apportionment is hereby legalized and confirmed.

The report shall state the amount of each kind of timber, the value per thousand feet, and the value per piece of all such timber.

In making such estimate and valuation the appraiser shall take into consideration distance of the timber from the nearest lake, stream, or railroad, and the character of the land, what amount, if any, of the timber has been burned, and the extent and character of such burning; the situation of the timber relative to risks from fire or damage of any kind, and the injury which will result in the prospective price that may be obtained in the future by reason of the removal of timber operations contiguous to or in the community of, such tract, thereby leaving such tracts isolated and the value of the timber to the State thereby lessened. ('17 c. 162 § 4)

[5269—]5. **Same—False report—Penalty**—Every such State Appraiser, who shall make a false report, or insert in any such report a false date, estimate appraisal, valuation quantity or statement of whatever nature; or shall make any such report without having examined the land embraced therein, or without having actually been upon the land; or who in executing his oath of office; or who in stating his qualifications as State Appraiser to the state auditor for the purpose of securing such appointment or who shall insert therein any false statement, shall be guilty of a felony. ('17 c. 162 § 5)

5270. Board of timber commissioners—Powers and duties—Rules, etc.—The governor, treasurer, auditor, state forester and attorney general shall constitute a board of timber commissioners, of which the governor shall be chairman. The auditor shall be ex-officio secretary of the board, and he or his deputy shall attend each meeting and make full minutes of the proceedings, which shall be signed at the close of each meeting by the commissioners present, and shall be kept subject to public inspection in the office of the auditor. The governor and two other members shall be a quorum for the transaction of business. Before any timber is sold the auditor shall submit to the board, which shall meet from time to time, upon the call of the governor, the question of such sale, and shall produce the record of appraisal of such timber and the board shall examine the same, together with other documents and records and such witnesses as it may require. If the governor and at least two other members of the board shall so determine, they shall enter upon the record of appraisals a statement, dated and signed by them that such timber is in danger of being injured, and that a sale thereof is necessary to protect the state from loss. Thereafter, and not before, the auditor may make such sale. Whenever any member of the board becomes satisfied, before issuance of a permit, that, by reason of fraud or misstatement on the part of any estimator, witness or officer, or by reason of any combination or irregularity, the interests of the state so demand, he shall withdraw his approval of any sale, by an entry signed by him upon the record of the appraisals. No sale of timber shall be made until not less than two independent estimates have been made.

The timber board shall upon call by the chairman thereof, meet during the month of January and formulate rules to be followed in regard to the bark mark, end mark, or other mark or marks to be utilized by the purchasers of timber, the method to be pursued in the settlement of trespass cases, and to establish such other rules as it may deem wise in the transaction of the state's timber business.

The timber board shall have power to instruct the state auditor how timber that has been seized by him shall be disposed of, and it may order sold at private vendue timber cut in trespass or removed from state lands in violation of law, where the appraised value thereof shall not exceed \$50.00. ('05 c. 204 § 13, amended '17 c. 326 § 1)

5273. Stumpage in small parcels—Conduct of sale, etc.—The board of timber commissioners may authorize the auditor to sell the stumpage of pine,

spruce, tamarack, cedar, balsam, balm of gilead, birch or poplar, on any tract of state land not exceeding one section in area, where the estimated quantity of log timber thereon does not exceed 100,000 feet, at public auction to the highest bidder, at the county seat of the county in which such tract is located. He shall give three weeks' published notice of any such sale in a paper published at the county seat of the county where such land is situated, instead of eight weeks' notice in papers at St. Paul and Minneapolis, as provided for in section 15 for the sale to be held at the capitol building. Such notice of sale shall contain a description of each tract of land upon which is situated any timber that is to be offered, and a statement of the estimated quantity of each kind of timber thereon, and of the appraised price of each kind of such timber per thousand feet, or per piece, or per cord, as the case may be. Timber estimated and appraised as log timber shall be offered and sold by the thousand feet; timber estimated and appraised as tie, or pole or post timber shall be offered and sold by the tie, or pole, or post, as the case may be; timber estimated and appraised as pulpwood, or lathbolts, or mine lagging, or wood for fuel purposes, shall be offered and sold by the cord; all cords to be single cords. The sale shall be made to the party who shall bid the highest price for all the several kinds of timber as advertised. The purchaser of any such timber at any such sale shall immediately pay to the auditor, or the person conducting the sale for him, for delivery by such official to the state treasurer, 25 per cent of the appraised value of such timber, and shall thereupon be entitled to receive from the auditor a permit to enter upon such land and cut and remove such timber. Before receiving such permit, however, he shall execute a bond to the state of Minnesota, with sureties to be approved by the auditor, in an amount at least double the appraised value of such timber, conditioned upon cutting of all said kinds of timber that there may be upon said land, clean, acre by acre, and paying the state the balance that may be due therefor, and for the faithful performance of all the terms and conditions of the law governing such matters. All timber cut on any of the state lands under any such sale and permit is to be scaled, or counted, as the case may be by a deputy surveyor general. In no case shall any such timber be removed from the land where it was cut, until it has been so scaled or counted by a deputy surveyor general. Any person removing any such timber from the land where it was cut before it has been so scaled or counted by a deputy surveyor general shall be deemed guilty of a felony, and may be prosecuted criminally therefor. The purchaser of any such timber shall pay the state for all timber that may be cut upon or removed from such land during the life of his permit, at his purchase price per thousand feet, or per piece, or per cord, as the case may be. In all other respects such sale shall be subject to all the restrictions and conditions applicable to the sale of other state timber. ('05 c. 204 § 16, amended '09 c. 476; '17 c. 325 § 1)

5274. Annual and emergency sales—Except as provided in this and the preceding section, there shall be only one sale of timber in each year, which shall be held not later than November 1st, and may be adjourned from day to day, but no longer, until complete; provided, that in case of emergency, if the board of timber commissioners shall unanimously determine that it is for the best interests of the state that more sales shall take place before the next regular sale, they shall be held under the same regulations, so far as practicable, as are provided for regular sales. ('05 c. 204 § 17, amended '17 c. 322 § 1)

5276. Permit—Upon the delivery and filing of the duplicate receipts mentioned in the preceding section, the auditor shall issue a permit to such purchaser, in a form approved by the attorney general, by the terms of which he shall be authorized to enter upon the land, and to cut and remove the timber therein described, according to the provisions of this chapter. Such permit shall be correctly dated and executed by the auditor, and signed by the purchaser. No permit shall cover more than two logging seasons, and the timber shall be cut and removed within the time specified therein. Not more than one section or fractional section of land, according to the government

survey, shall be described in any one permit, and no permit shall be issued to any person other than the purchaser in whose name the bid was made. The permit shall state the amount of timber estimated to be thereon, the estimated value thereof, and the price at which it is sold, or the price per thousand feet, in case it is sold by the thousand feet, and shall specify the bark, end or other mark to be used. A separate bark, end or other mark shall be used on the timber cut under each permit, and, if the permit covers more than one season, it shall specify a separate mark to be used each season. It shall provide that the purchaser shall place the specified bark mark, upon every piece of timber cut, and also plainly upon the end thereof the stamp mark MINN, and, that, in case of any failure to place both bark and stamp mark upon any such piece, the state shall have the right to take possession of the same wherever found. It shall contain such other provisions as may be necessary to secure to the state the title of all timber cut thereunder, wherever found, until full payment thereof, and until all provisions of the permits have been fully complied with. It shall also provide that all timber standing on the land and sold shall be cut; that the same shall be cut clean, acre by acre, without damage to other timber; that the purchaser agrees to remove all timber whether it be log timber or any other timber of value, unless specifically withheld under the terms of sale, and that timber sold by board measure, determined by the state auditor as not convertible into board measure may be paid for by the piece upon a graduated scale based upon the size, species, or value of each piece or cord, as may be determined by the state timber board; that the purchaser shall pay to the state the permit price for all timber, including timber which he fails to cut and remove, and the amount of fees of the surveyor general; and that he shall, in writing, notify the surveyor general for the district, and also the auditor, at least fifteen days before any cutting is done, at what time such cutting will begin, at least fifteen days before any timber is removed from the land, at what date such removal will begin.

It shall provide that the purchaser shall make a report in writing to the state auditor under oath, enumerating and stating the amounts of timber cut under such permit; the kinds of timber removed and the amounts of each in board feet per piece, in cords, or any other dimension, in the manner and forthwith whenever so required by the state auditor. The permit shall further state that a false return made contrary to the provisions of the permit shall constitute a gross misdemeanor and be punished as such, and such return when wilfully made is hereby declared to be a gross misdemeanor, and shall be punished as such. The permit shall state that the state auditor shall have power to order suspended all operations under the permit and any timber cut or removed during the period of suspension is hereby declared to be cut in trespass. The permit shall further state that the timber board may cancel the permit at any time when in its judgment the conditions thereof have not been complied with, and such cancellation shall constitute repossession of the timber by the state. The purchaser shall have ninety days within which to remove his equipment from such land. The permit shall further state that if the purchaser at any time fails to pay any obligation to the state under all or any other permits, this, any or all other permits may be cancelled as hereinbefore provided for. The permit shall also state that any timber removed in violation of the terms of the permit or any law shall constitute trespass. A provision shall be contained in the permit that the statute of limitations shall not prevent the bringing of an action growing out of any violation of any provision, either civil or criminal, of this act, and no statute of limitations shall so operate. The permit shall state that the timber board reserves the right to change the bark end or other marks of identification from time to time as may be expedient which the purchaser must place upon all timber purchased from the state. The state board of timber commissioners, state forester, attorney general, or state auditor are hereby specifically empowered to enforce all provisions and all conditions contained in any timber permit executed pursuant to the provisions of this act. Any permit failing to conform to the requirements of this section shall be void on

its face. All permits shall be filed for record with such surveyor general. ('05 c. 204 § 19, amended '17 c. 327 § 1)

5277. Bond of purchaser—

Joint demurrer by principal and surety in action for trespass (see 128-300, 150+912). Pleading, ¶198.

[5278—]1. **Certain permits extended**—All logging permits, the holders of which could not cut and remove the timber described in them before their expiration, whether said expiration was at the time of the original expiration or after one or more extensions thereof, are hereby extended for another logging season ending June 1, 1917, provided, that the facts relative to the failure to cut and remove timber under said permits be presented to the board of timber commissioners within thirty (30) days from the passage of this act and be found by said board sufficient justification for the failure of said logging permit holders to conform to the terms of said permits prior to June 1, 1916. ('17 c. 28 § 1)

[5278—]2. **Further extension of permit**—The board of timber commissioners is hereby authorized to extend the time within which purchasers of state timber, who at the time of the passage of this act shall have been granted two extensions of one year each under the provisions of section 5278, General Statutes 1913, may remove the same from the state land where cut, such cutting having been done before the expiration of the second extension of the permit. Such extension shall be granted only by unanimous consent of the board of timber commissioners, shall in no instance exceed the period of 12 months and shall be granted only to purchasers of state timber who have been prevented by conditions beyond their control from removing from state lands the timber cut by them on said lands before the expiration of the second extension period provided for by section 5278, General Statutes 1913. ('17 c. 444 § 1)

[5278—]3. **Same—Construction**—Nothing in section 21, chapter 204, Laws 1905 [5278—2] or acts amendatory thereof shall be construed to invalidate or nullify this act. ('17 c. 444 § 2)

[5281—]1. **Cancellation of certain contracts and permits**—That the State board of timber commissioners shall have power in cases where any contracts for the purchase of timber has been entered into on or prior to October 15th, 1914 and the purchaser has failed to cut and remove the timber therefrom and has defaulted in payment to the State, making the bondsmen liable under their bonds to cancel such contracts or permit and repossess the state of the timber standing thereon, releasing the bondsmen from responsibility for payment for the timber not removed from the land so placed under permit. ('17 c. 314 § 1)

Section 2 provides that this act shall be of no force and effect after October 1, 1917.

5284. Rescale—

Finding that rescale was made jointly by the representative of the state auditor and the deputy surveyor general held sustained by the evidence. Such officer selected by the state auditor to make a rescale held not disqualified because he participated in making the original scale. It may be shown that the rescale included timber which the purchaser had no right to remove under the contract, and such timber may be deducted from the recovery by the state. In an action by the state to recover from a purchaser of pine timber for a deficiency in the scaling of the timber as shown by a rescale, held, that the findings of a trial court are sustained by the evidence. The demand for a rescale was properly made upon the person holding office of surveyor general at the time the demand was made (122-400, 142+717). Officers, ¶110; Public Lands, ¶16.

If the doctrine of laches applies against a state, held, that there was no unreasonable delay in demanding a rescale of timber sold (122-400, 142+717). Equity, ¶71(2).

5302. Limitation of actions—The statutes of this state limiting the time for bringing either civil, or criminal actions shall not apply to any action brought by the state for trespass upon any of its lands, or for violating any of the terms of the permit under which timber is removed from state lands, or for failure to pay the state for all the timber removed under any such permit, or to any criminal prosecution instituted under this chapter. and any civil action brought under this chapter may, at the election of the attorney general,

be brought in any county in this state. ('05 c. 204 § 43, amended '17 c. 323 § 1)

This section is applicable to a trespass committed prior to its enactment by one holding a permit to cut timber of not less than a specified size, in cutting timber of a less size (128-300, 150+912). Public Lands, §=16.

MINERAL LANDS

5304. Reservation of minerals and water powers—

Cited (124-271, 144+980).

5317. Permits, leases, and assignments—Filing—Copies—

This section is not a statute of frauds, and contracts relating to the assignment of state mining leases, which observe, in their execution, the requirements of contracts for the sale of lands, are valid between the parties (125-81, 145+791). Mines and Minerals, §=5.

[5318—]1. **Failure of co-owner of lease to pay proportion—Payment by other owner—Notice to delinquent—**Upon the failure of any one of several co-owners of any lease of mineral land from the State of Minnesota which it may heretofore or may hereafter make, to pay his proportion, represented by his proportionate interest in said lease, of any annual payment or royalty payment of taxes assessed against the land covered by said lease or the improvements thereon, or the iron ore products thereof, or any personal property at any mine on said land, according to, as required by and when due under the terms of said lease or the laws of this state, any co-owner of said lease who may have heretofore or who may hereafter pay the same or any part thereof, who was not under contract obligation at the time of making said payment to make it, may after the expiration of the time fixed by said lease or the law for making said payment, give such delinquent co-owner and the other co-owners, if any, personal notice in writing or by publication for at least six successive weeks, once a week, in the newspaper published nearest the said land entitled under the laws of this state to publish legal notices, that he has made said payment, describing the lease and the land covered thereby on account of which it was made, the amount due, when due, and for what due, on account of which said payment was made and the date of making the same, and demand that said delinquent co-owner contribute his said proportionate share of said payment by paying the same together with six per cent interest thereon from the time of said payment until the time of repayment, together with the cost of said publication, to him within ninety days after the personal service of such notice upon him, or within ninety days after the completion of said publication, and that if he fails so to do that his said interest in said lease will become the property of and be forfeited to his co-owner or co-owners paying the same. ('15 c. 303 § 1)

[5318—]2. **Same—Failure of delinquent to contribute—Rights of other owner—**If said delinquent co-owner before the expiration of said time shall refuse or fail to contribute and pay his said proportionate share together with said interest and cost of publication as and when herein and in said notice provided, his interest in said lease shall thereafter become the property of and belong to said co-owner making said payment, and the other co-owners thereof, if any, who shall within ten days after the expiration of said ninety days, pay to him their share of the amount due him under said notice, represented by their respective interests in said lease, with the same force and effect as to said delinquent's interest in said lease, as if said lease as to said delinquent's interest had been forfeited and cancelled by the state of Minnesota, and a new lease on the same terms and conditions as said old lease had been issued by said state of and for said delinquent's share therein to his said co-owner or co-owners making said payment. Such co-owners so contributing and paying within said ten days shall share in the interest of said co-owner so forfeited, in proportion to their then respective interest in said lease. ('15 c. 303 § 2)

[5318—]3. **Same—Affidavits to be filed with auditor, etc.—**The affidavit of the party making such personal service and the affidavit of the publisher of said newspaper accompanied by a duplicate original of said notice, together with the affidavit of said co-owner making said payment, that said delinquent

has not paid to him the amount due under said notice within the time herein and in said notice specified with the names of the other co-owners, if any, who during said ten days contributed their proportionate share thereof may be filed in the office of the auditor of the state of Minnesota and shall constitute conclusive evidence in all courts and proceedings of the matters therein stated, except as to such as may be proven to be untrue. Said auditor shall receive, file without charge and safely keep the foregoing and all thereof which shall be open to the inspection of anyone interested therein. ('15 c. 303 § 3)

[5319—]1. **Mining under public lakes and rivers forbidden**—It shall be unlawful for any individual, co-partnership or corporation to mine any mineral below the low water mark of any public lake or river without first having obtained authority from the state. ('15 c. 78 § 1)

[5319—]2. **Same—Draining meandered lake for mining forbidden**—It shall be unlawful for any individual, co-partnership or corporation to drain any meandered public lake for the purpose of mining of minerals without first having received the consent of a board hereby created for such purpose consisting of the governor, attorney general, secretary of state, state treasurer and state auditor, or other officers which may be empowered by law to grant such permission. ('15 c. 78 § 2)

[5319—]3. **Same—Penalty for violation**—Any individual, co-partnership or corporation violating the provisions of this act shall upon conviction thereof be punished by a fine of not exceeding \$10,000.00, or by imprisonment in the state prison for not to exceed five years, or by both such fine and imprisonment at the discretion of the court. ('15 c. 78 § 3)

[5319—]4. **Iron ore under lakes and rivers—Contracts for mining—Royalties—Eminent domain**—The governor, attorney general and state auditor are hereby empowered to enter into contracts or agreements with persons, co-partnerships or corporations for the mining and disposing of the iron ore situate under any waters of any public lake or river in the state of Minnesota. The minimum royalty for each gross ton of iron ore disposed of under such contract, shall be not less than fifty cents per ton upon the ore in its natural condition as mined. Such contracts or agreements for the mining, removing and disposing of such iron ore may provide for the drainage of such lake or river, or the diversion of the waters thereof to a new bed or channel. The contracting parties herein provided for on the part of the state of Minnesota, shall have power to institute condemnation proceedings to pay for the interests of private persons or corporations who may be injured or whose rights may be destroyed by the carrying on of such operations, and such contracts or agreements for mining, removing or disposing of such iron ore may contain a covenant on the part of the second party to return the waters of such lake or river to their former beds as nearly as possible after the ore shall have been removed. ('17 c. 110 § 1)

[5319—]5. **Same—Proceeds to be added to school fund, etc.**—The principal of all funds arising from the disposal of such iron ore shall forever be preserved inviolate and undiminished and shall be added to the permanent school fund of the state to be invested and re-invested as provided by law for the investment of said permanent school fund, and the interest thereon shall be distributed in the same manner as the income from the present school fund is now, by law, distributed. ('17 c. 110 § 2)

[5319—]6. **Same—Contracts, how sold**—All contracts or agreements for the mining, removing and disposing of iron ore provided for in section 1 of this act [5319—1] shall be sold at public sale to the highest bidder on the basis of the royalty to be paid to the state, after such sale shall have been advertised for three weeks in such a manner and in such legal publications as the above named state officers shall determine, but no bids shall be entertained that shall not equal or exceed the minimum price specified in this act. ('17 c. 110 § 3)

[5319—]7. **Certain options for mining leases given by counties validated**—That in all cases where an option for a mining lease without the required

publication in the official proceedings of the county commissioners, of a resolution fixing the time for considering the same, and setting out the terms and conditions thereof, has since December 1st, 1914, been granted by any county of the State of Minnesota, calling for a mining lease on a royalty basis of twenty cents a ton of 2,240 pounds, with the provision, however, that if such lessee should receive by an assignment or sub-lease thereof a greater royalty than twenty-five cents per ton, such county to receive one-half of such excess over said twenty-five cents per ton, such options and leases thereto attached and made a part thereof are hereby declared legal and valid, provided that nothing herein contained shall be considered to apply to actions now pending which involve the validity of any such options. ('15 c. 122 § 1)

STATE PARKS

[5361—]1. **Certain lands added**—That the boundaries of Minneopa State Park as established and created by chapter two hundred ninety-seven (297) of the General Laws of the State of Minnesota for 1905, and as enlarged by chapter four hundred and nine (409) of the General Laws of the State of Minnesota for 1909, be and the same are hereby enlarged by adding to said park the following land situate in Blue Earth county, and State of Minnesota, to-wit: All the south twenty-six (26) acres of the southeast quarter of the northeast quarter (SE $\frac{1}{4}$ of NE $\frac{1}{4}$) of section twenty (20) in township one hundred and eight (108) north of range twenty-seven (27) west, which lies west of the public highway now located on said twenty-six (26) acre tract, containing about eleven and one-half acres, and the said land shall be and the same hereby is set apart perpetually as a public park and is made a part of said Minneopa State Park. ('17 c. 157 § 1)

STATE FORESTS

[5378—]1. **Certain lands established as state forests**—The state school and other public lands owned by the State of Minnesota, included within the following described limits: Townships 61, 62, 63, 64, 65, 66, 67 and 68 N., Ranges 7 east to 14 west inclusive; Townships 62, 63, 64, 65, 66, 67 and 68 N., in ranges 15 and 16; Townships 63, 64, 65, 66, 67, 68, 69 and 70 N., in ranges 17 and 18; Townships 64, 65, 66, 67, 68, 69 and 70 N., in range 19, and townships 65, 66, 67, 68, 69, 70 and 71 in ranges 20 and 21; are hereby established as state forests under the designation of Minnesota state forests. Said lands are hereby placed under the jurisdiction and control of the state forestry board, to be managed, as other state forests are managed by the said board, on forestry principles for timber production, and for such other uses as are not inconsistent therewith. The net revenue therefrom shall be used for the purposes for which the lands were granted to the state. ('17 c. 448 § 1)

[5385—]1. **Water powers owned or controlled by state withdrawn from sale, etc.**—All water powers having a possible average development of one hundred horse power or more, owned by or subject to the control of the state of Minnesota, and all lands so owned, controlled or held in trust by the state of Minnesota lying within one mile of such water powers are hereby withdrawn from sale and held for the purpose of the improvement and utilization of the same for the purpose of having paper manufactured by plants built at and using the power of such water powers. ('17 c. 360 § 1)

[5385—]2. **Same—Lands overflowed and unfit for agricultural purposes, but suitable for re-forestation, withdrawn from sale, etc.**—All the lands owned, controlled or held in trust by the state of Minnesota, which lands would be overflowed by the complete and full development of the water powers hereinbefore referred to are hereby reserved and withdrawn from sale in order that they may be overflowed by the improvement of the water powers within whose basin of overflow they lie. All lands unfit for agricultural and suitable for reforestation purposes are hereby withdrawn from sale. The state auditor is hereby requested and directed to ascertain all the water powers and

lands hereinbefore referred to with all due speed and to withdraw from sales all such lands and to report such withdrawals, including in such report the description of the land, the present character and the growth thereon and the estimated value of the land and also of the timber, if any, now growing thereon. Also the quantity and character of the timber suitable for use in the manufacture of paper, growing on said land and the most accessible method of transportation of said timber, of use in the manufacture of paper, to the nearest reserved water power, or any water power which in the opinion of the state auditor can advantageously be procured by the state, by condemnation or purchased for the purposes provided in this act. ('17 c. 360 § 2)

[5385—]3. **Same—Duty of auditor**—The state auditor shall make an investigation of the possibility of the state securing by purchase or condemnation water powers in the vicinity of state lands, wherein pulpwood is now growing or upon which it may be profitably grown in the future. For such purpose it shall be proper for him to call upon the state drainage engineer for assistance. ('17 c. 360 § 3)

[5385—]4. **Same—Duties of board of control, auditor and forester**—The state board of control is hereby directed to investigate the advisability and feasibility of having the inmates of the state reformatory engaged in the manufacture of pulpwood in a pulp mill to be operated by the state. The state auditor shall make a full and complete report to the next session of the legislature of all suitable water powers that may be utilized in the operation of a state owned pulp and paper mill.

The state forester shall make an estimate of how many cords of pulpwood per year can be grown upon state owned lands, unfit for agricultural purposes, and which in his opinion can wisely be utilized in the product of pulpwood and he shall make report thereof to the next legislature. ('17 c. 360 § 4)

UNITED STATES LANDS

[5394—]1. **Minnesota state land commission**—That a commission to be known as the Minnesota state land commission is hereby created, to consist of the governor, attorney general and state auditor. The governor shall be ex-officio chairman, the state auditor shall be ex-officio secretary and shall report to the legislature the findings and conclusions of said commission, as hereinafter directed. ('17 c. 324 § 1)

[5394—]2. **Same—Claims to lands under federal acts—Terms of settlement, etc.**—This commission shall have power to consider and propose terms of settlement of all claims to the legislature of all differences or controversies that now exist or may hereafter arise between the state of Minnesota and the United States over lands granted to the state of Minnesota by the United States under any act of congress. It may consider and propose terms of settlement of such claims, differences or controversies separately or in toto. To the end that such settlement or settlements may be carried out and completed, said commission is hereby authorized to accept patents of lands issued by the United States and to reconvey to the United States any state lands which it may by unanimous vote determine should be so reconveyed in order to carry out the provisions of this act, whenever approved by the state legislature. ('17 c. 324 § 2)

[5394—]3. **Same—Ratification by legislature**—This commission shall refer its findings and conclusions to the legislature for confirmation and no adjustment or settlement of any claim by the commission shall be final until ratified by the legislature. Provided however, that the commission have authority to make final settlement and adjustment of individual claims of settlers or Indian allottees, where the land in question does not exceed 160 acres in area. ('17 c. 324 § 3)

[5394—]4. **Same—Auditor to report claims**—The state auditor is hereby directed to report to said commission the status of all claims of the state against the United States for lands patented to the state by the United States

under any acts or grants relating to lands; and the status of all claims of the United States against the state for lands alleged to have been wrongfully patented or conveyed to the state by the United States. ('17 c. 324 § 4)

[5394—]5. **Same—Expenses**—The state auditor is hereby directed to expend from any fund or funds appropriated for the maintenance of any department of the state auditor's office such sums as may be necessary for clerk hire, expenditure of travel, hotel bills or otherwise as may be necessary to carry out the provisions of this act. Such expenditures shall be audited by the state auditor and approved by the commission and for such purpose a per diem expenditure may be audited and approved. ('17 c. 324 § 5)

CHAPTER 41

EMINENT DOMAIN

5395. Scope of chapter—

Cited (121-376, 141+801).

The state's power of eminent domain defined (125-194, 145+967). Eminent Domain, ¶4.

The use of the words "private property" does not prevent the implication that state lands may be appropriated under the power of eminent domain. State land cannot be appropriated, unless expressly or by necessary implication authorized by statute. This authority was granted by G. S. 1894 § 2606, and such right was carried forward into the revision of 1905 (124-271, 144+960). Eminent Domain, ¶46.

5396. Definitions—

Executor may recover proceeds of land condemned (121-233, 141+170). Eminent Domain, ¶156; Executors and Administrators, ¶130(1).

5397. Proceedings, by whom instituted—

The petition need not allege that the proceedings have been authorized by the board of directors of the petitioning corporation (128-415, 151+198). Eminent Domain, ¶191(2).

5399. Petition and notice—

Cited (121-233, 141+170).

State land cannot be appropriated, unless expressly or by necessary implication authorized by statute. This authority was granted by G. S. 1894 § 2606, and such right was carried forward into the revision of 1905 (124-271, 144+960). Eminent Domain, ¶46.

A description of waters of a stream sought to be taken by a power company held sufficiently definite (128-415, 151+198). Eminent Domain, ¶191(6).

The petition need not allege that the proceedings have been authorized by the board of directors of the petitioning corporation (128-415, 151+198). Eminent Domain, ¶191(2).

G. S. 1894 § 2606 cited—124-271, 144+960.

5401. Order made thereon—Commissioners—

Cited (121-233, 141+170).

A judgment of condemnation for a school site held justified, without proof of necessity (121-376, 141+801).

The rights of a public service corporation to divert water from navigable streams of one drainage basin into those of another drainage basin determined (127-23, 148+561). Eminent Domain, ¶1, 13, 66; Navigable Waters, ¶34.

Burden of proof and evidence as to propriety of appropriation (127-23, 148+561). Eminent Domain, ¶196.

5402. Powers and duties of commissioners—

Where a leasehold estate is taken, the measure of damage is the fair market value of the estate so taken; and if only a part be taken, the measure of damages is the difference between the value of the entire estate and the value of the part not taken (135-389, 160+1021). Eminent Domain, ¶147.

Measure of damages, where leasehold in part of premises is taken, front wall of building removed, which landlord is not required to rebuild, and where lease is terminable on 60 days' notice and payment of a specified sum, stated (see 135-389, 160+1021).

In proceedings by city of St. Paul to condemn land for street purposes, award for land occupied by tenant held properly made in gross, such award to be thereafter apportioned between the landlord and tenant according to their interests (135-389, 160+1021). Eminent Domain, ¶157.

Damages awarded held not so inadequate as to indicate passion and prejudice of the jury (128-415, 151+198). Eminent Domain, ¶150.

Conclusiveness of award as to title to land (121-233, 141+170).

5404. Payment—Tender—Deposit in court—

See notes under § 5402.

Cited (124-271, 144+960).

Determination as to right to money paid into court in condemnation proceedings held not to bar a subsequent action to determine ownership of such bond (126-1, 147+662, Ann. Cas. 1915D, 589). Eminent Domain, ¶245.

5407. Appeal—

Cited (162+523).

All parties entitled to share in an award in gross for land taken for street purposes had the right to appeal from the award and have the same reassessed (135-389, 160+1021). Eminent Domain, ¶254.

Under a provision of a special municipal charter authorizing an appeal "from an assessment of damages and benefits," an aggrieved party on such appeal could not question the regularity of the proceedings, the jurisdiction of the municipal council, or the validity of the provisions of the charter authorizing the proceeding (135-436, 161+154). Eminent Domain, ¶251.

Where the commissioners imposed on the railroad company the duty to construct a cattle pass and culverts for the benefit of the landowner, such conditions were not nullified by the failure of the petitioner, in its notice of appeal from the award, to mention such conditions, and such conditions remained in force after determination of the appeal (128-321, 150+906). Eminent Domain, ¶238(4).

5408. Trial—Costs—

The appeal is to be treated, and heard and disposed of, as an ordinary civil action commenced in the district court; and hence such appeal, where taken on the question of damages, may be dismissed without the consent of the respondent, under § 7825 (128-66, 150+222). Eminent Domain, ¶238(1, 7).

5409. Judgment—Possession—

See notes under § 5402.

Cited (162+523).

All parties are bound and concluded by the award as fixed and determined in the condemnation proceedings (135-389, 160+1021). Eminent Domain, ¶243(3).

Where the commissioners, in their award, imposed the condition that the railroad company should construct cattle passes and culverts for the benefit of the landowner, but such condition was not incorporated in the petitioner's notice of appeal, the court, after determination of the appeal, had power to amend its judgment, so as to include such condition (128-321, 150+906). Eminent Domain, ¶241.

5411. Record evidence, how perfected—

To bar a party from sharing in the award on the ground that it has been determined in the condemnation proceedings that he was entitled to no part thereof, it must be shown affirmatively that the question was in fact considered and determined in such proceeding (135-389, 160+1021). Eminent Domain, ¶158.

Any party entitled to share in the award may bring an action for his share against any other party to whom such share has been paid (135-389, 160+1021). Eminent Domain, ¶245.

[5411—]1. **Proceedings by state, etc.—Rights, interest or estate, how described, etc.—Fee simple—**In all cases where proceedings shall hereafter be instituted for the condemnation of property for public use by the state of Minnesota or by any political subdivision thereof, the right, interest or estate in said property proposed to be taken, if greater than an easement, shall be specifically described in said proceedings, and if the right, interest or estate so described shall be a fee simple absolute, said fee simple absolute shall be an estate without any right of reversion under any circumstances whatsoever. ('17 c. 419 § 1)

5423. Railroad built without right—Action—

In ejectment, converted into a condemnation proceeding by defendant's answer, under this and the next section, held, that the award of damages is excessive, and a new trial should be granted (124-413, 145+161). Eminent Domain, ¶263.

5424. Answer—Ascertainment of damages—

See note under § 5423.

The question of the competency of witnesses in cases under this section rests largely in the discretion of the trial court (124-413, 145+161). Evidence, ¶498½.

CHAPTER 42

MILLS AND DAMS

WATER POWERS

5429. Dams—For what purposes—Eminent domain—

The rights of a public service corporation to divert water from navigable streams of one drainage basin into those of another drainage basin determined (127-23, 148+561). Eminent Domain, §1, 13, 66; Navigable Waters, §34.

LOGGING DAMS

5433. County board may license—

Liability for damages by flooding of land below a log dam (see 123-476, 144+154). Navigable Waters, §39(5).

It is immaterial that a logging corporation was not licensed to take possession of a river by the county commissioners as provided by this section, as defendant's authority is granted by the statute under which it was incorporated. An instruction that defendant, a logging corporation, had no rights in or to a navigable stream superior to the right of plaintiff, a mill owner, held error. The construction of flooding dams by logging corporations is not unlawful, and no damages can be recovered therefor, unless the construction thereof and the conduct of the same be unreasonable (127-8, 148+517). Navigable Waters, §39(2, 5, 6).

UNIFORM STAGE OF WATER IN LAKES

5443. Revision—Confirmation, etc.—Lien—Assessment, how distributed, etc.—The court may revise, correct, amend or confirm such assessment, in whole or in part, or it may order a new assessment, in whole or in part, and, upon like notice, revise, correct, amend, or confirm the same. A copy of the assessment as finally determined or of so much thereof as relates to assessed lands lying in the several counties, shall be filed with the auditor of each such county; and such assessment shall be a lien upon the tract to which it relates. Such assessment may be distributed over a term of years not exceeding ten, and shall be extended and collected along with the taxes levied thereon. (Amended '17 c. 395 § 1)

5447. Cities and villages—The council of every city and village within which the whole, or any part of any navigable or meandered lake is situated, or the council of any city or village which is a riparian owner on any such lake adjoining such village or city, shall have all the powers in respect to establishing and maintaining the waters thereof at a uniform level that are conferred by this chapter upon county boards, and all the provisions of this chapter regulating the exercise of such powers shall be applicable in such cases. The council of any village or city may, for the purpose of this act, acquire title to any navigable lake which is not meandered. Such village or city is authorized to issue its certificate of indebtedness or bonds at a rate not to exceed 6 per cent per annum, to mature at a date corresponding with the date of payment of assessments upon benefited property, as provided by section 5443 of this chapter. Provided, however, that this act shall not apply to cities or municipalities incorporated under a home rule charter. (Amended '17 c. 395 § 2)

5449-5452. [Repealed.]

See note under § [5452—]1.

[5452—]1. Lakes in certain counties—Powers of county board—When the whole or major part of any navigable lake in this state is situated in a single county having a population of not more than 18,000 inhabitants, the county board of that county, in order to improve navigation on said lake or to promote the public health or welfare, may appropriate a sum not exceeding

\$1,000.00 in any one year, for any or all of the following purposes, viz: to erect or maintain sufficient dams or embankments upon and along the shores of said lake or across any of its outlets; to raise and maintain the waters therein at such uniform height as said board may establish, as provided by law; to acquire by condemnation or otherwise the necessary lands for the erection of such dams or embankments; to acquire by condemnation or otherwise the right of way for such public highways leading to such lake, dam or embankment as may be necessary or convenient for public uses; to acquire by condemnation or otherwise lands for public play grounds or public parks and for public roads thereto; to acquire by condemnation or otherwise all lands to be overflowed by raising the waters of such lake; to pay for such damages as may be caused to, or upon, adjacent lands by the overflowing thereof, to pay the cost and expenses of such proceeding and for any other purpose incidental or necessary to such improvements. ('17 c. 338 § 1)

Section 5 repeals 1913 c. 287 [5449-5452].

[5452—]2. **Same—Dam, etc., where located**—Any such dam, embankment, lands or highways may be located in either county in which such lake or any part thereof is located. The money so appropriated shall be expended under the direction of such county board. ('17 c. 338 § 2)

[5452—]3. **Same—Power to appropriate**—The county board of the county in which the smaller part of any such lake is located may likewise appropriate a sum not exceeding \$500.00 in any one year, for any of the purposes hereinbefore mentioned. ('17 c. 338 § 3)

[5452—]4. **Same—Other powers not curtailed**—This act shall in nowise curtail any of the powers or authority granted to such county board by the provisions of chapter 42, revised laws 1905, or acts amendatory thereof. ('17 c. 338 § 4)

CHAPTER 43

LOGS AND LUMBER

5479. Wilfully injuring booms, etc.—

One who destroys a boom in a navigable river does not violate this section, where such boom constitutes an unauthorized obstruction to navigation (130-229, 153+532, Ann. Cas. 1916C, 267). *Logs and Logging*, §=37.

CHAPTER 44

DRAINAGE

Prior drainage acts—1907 c. 448 §§ 3, 5, 17 (122-504, 142+899).

STATE DRAINAGE COMMISSION

5480. Commission created—How constituted—

125-104, 145+794.

Sections 5480 to 5512 and 5523 to 5589, being chapter 470 of Laws 1907, chapter 230 of Laws 1905, and subsequent amendatory acts, are in pari materia, and should be construed together as one law (133-90, 157+998). *Drains*, §=2(2).

5481. **Powers**—The drainage commission of the State of Minnesota shall have power to construct as hereinafter provided, any ditch, drain or other water course within the State of Minnesota, and such ditch, drain or other water [course] may in whole or in part follow and consist of the bed of any creek, stream, or river, whether meandered or not, and they may widen, deepen, straighten, change, lower or drain the channel or bed of any creek, river, lake or other natural water course, whether navigable or whether meandered or not,

and may construct new and additional outlets to any marshy, shallow or meandered lake, for the purpose of draining the same, and may follow and extend the same into or through any city or village within the state far enough to secure a sufficient fall and flow of water to reasonably effectuate the purpose for which the work is extended, and may confine any such creek, river or other natural water course by means of dykes, levees and embankments to its natural or artificial bed, as laid out, (and shall also, whenever it shall appear to its satisfaction that the drainage of any territory may be made more effective by the construction and maintenance of dams, or other works, for retaining and controlling the flood waters tributary to such territory, have the power to construct or acquire such dams or other works, and flowage rights therefor, and to maintain and operate the same;) Provided, that when in any such proceedings the waters of any creek, river or other water course are diverted from their natural bed by such artificial ditch or drain, such ditch or drain shall as nearly as practicable follow the general direction of such creek, river or water course, and terminate therein.

And, provided, further, that no meandered lake shall be drained under the authority of this act, except in case such lake is normally shallow and grassy and of a marshy character or except in case such meandered lake is no longer of sufficient depth and volume to be capable of any beneficial public use of a substantial character for fishing, boating or public water supply. Provided, further, that no meandered lake shall be drained or lowered under the authority of this act unless petitioned for by at least sixty per cent of the legal voters residing within four miles of such lake, who are freeholders, whose lands are affected as shown by the viewers' report and filed in the office of the clerk of the district court of the county in which such proceedings are had. (Amended '15 c. 273 § 1)

1915 c. 273 § 1 adds the words in parenthesis.

[5481—]1. **Application of preceding section**—All the provisions of law applicable to the laying out, establishing and acquisition of the public works authorized by Section 5481 shall apply to the work authorized by said Section 5481 as amended by Section 1 of this act. ('15 c. 273 § 2)

See note under § 5481.

5481-A. Rules and regulations—Duties of engineer—The state drainage commission of the state of Minnesota is hereby authorized and empowered and it shall be its duty to prescribe rules and regulations for the establishment and construction of drainage projects under any and all of the drainage laws of the state in accordance with what may seem to said commission to be just and proper and consistent with the provision of law governing ditch proceedings and such commission shall furnish copies of said rules and regulations for the use of engineers, county officials and others engaged in such work, but said rules and regulations shall be construed to be advisory only.

It shall be the duty of any engineer appointed by any court or board to take charge of any drainage project to proceed therein and be governed as far as practicable in his work therein by the rules and regulations made by the said drainage commission and all such engineers engaged in any such project shall make an additional copy of their plats, maps, profiles and reports, and shall transmit such copy of all said papers to the drainage commission and such commission shall file and keep the same and shall make and keep a permanent record of such items thereof as it may deem proper in books to be prepared for that purpose and kept in the office of such commission.

In taking the levels of the surface of the ground over which the engineer shall make his survey for any such drainage project, he shall, whenever practicable, use as his base datum the sea level datum as determined by the use of the elevation of bench marks, which have heretofore or may hereafter be established by the United States geological survey, the United States coast and geodetic survey, the United States corps of engineers and other reliable engineering authorities. ('17 c. 441 § 1)

1917 c. 441 § 1 amends this chapter by adding a section to be known as § 5481-A.

5481-B.—Commission to pass on plans on request—Submission of questions—Physical examination—Expenses—The state drainage commission is further authorized and directed upon request to examine, criticise and pass upon any plans for the construction of drainage projects which may be submitted to it by officials having the same under consideration.

Any court or county board having before it any proceedings to establish or repair any drainage project may submit to said drainage commission the petition, engineers' reports and other papers in connection therewith and propound to said commission any question relative to said proceedings or said project which it may desire to have answered and said commission and the state engineer or his deputies and assistants shall forthwith proceed to examine all the papers so submitted and shall in good faith answer all such questions so propounded and if in the opinion of the drainage commission there is any defect in any of the plans and designs so submitted, the said commission shall report the same back to such court or county board with its recommendations as to what alterations, corrections or additions should be made.

And whenever in the opinion of said drainage commission or said engineer it shall be deemed advisable and for the best interest of such drainage project that an examination upon the ground should be made of the route of the proposed drainage project, then said commission is hereby authorized to cause such examination to be made before passing upon the report of the engineer in said proceedings. In case such physical examination shall be made of the proposed route, the expense thereof shall be at once reported to said court or board and such expense, as it may be allowed by said board, shall form a part of the expenses of said drainage project and shall be paid as other claims against the same.

During all the proceedings carried on relative to the drainage project the commission shall give its advice to the courts or county boards, engineers and other officials connected with or in charge of such proceedings whenever advice is required. ('17 c. 441 § 2)

1917 c. 441 § 2 amends this chapter by adding a section to be known as § 5481-B.

5497. Contract, how let—Payment, how made—

Notice to the contractor and his surety, as required by § 8249, need not be given before bringing action on the bond given under this section (133-90, 157+998). Drains, ~~§~~ 49.

5511. Duties of secretary—Expenses, fees, etc.—

125-104, 145+794.

COUNTY DITCHES

5523. Powers of county board—The county board of the several counties and the district court of the several districts of the state of Minnesota, are hereby authorized and empowered to make all necessary orders for and cause to be constructed and maintained, public drainage systems, drains and ditches to deepen, widen, straighten or change the channel or bed of any river, creek or water way following the general direction thereof, and when practical terminating therein to extend the same into or through any city or village for the purpose of securing a suitable outlet to drain in whole or in part, meandered lakes which have become normally shallow and of a marshy character or which are no longer of sufficient depth or volume to be of any substantial public use for fishing, boating or water supply, and when deemed necessary to control flood waters therein may raise, lower or establish the height of water in any lake body of water or water course and cause to be constructed all necessary structures and improvements to maintain the same for flood control or other public purposes, and where only a part of the meandered lake is to be drained to cause to be constructed dykes or dams for the purpose of holding the water at ordinary high water mark in that part of the lake not to be drained, but no meandered lake upon which any city or village is now a riparian owner shall be drained or lowered unless by the approval of a majority vote of the legal voters of said city or

village at any annual or special election held for such purpose. (Amended '15 c. 300 § 1; '17 c. 441 § 3)

128-69, 150+209; notes under §§ 5531, 5589.

1907 c. 470 and 1905 c. 230, and subsequent amendatory acts, being §§ 5480 to 5512 and §§ 5523 to 5589 herein, are in pari materia, and should be construed together as one law (133-90, 157+998). Drains, ¶2(2).

The act of 1909 confers jurisdiction on the district court, or the judge thereof, though the proposed ditch is wholly within one county and will not result in benefit or damage to lands in an adjoining county (131-43, 154+617). Drains, ¶26.

The act of 1909, in conferring jurisdiction on the district court of proceedings for a ditch located wholly within one county, and not benefiting or damaging lands in an adjoining county, is not unconstitutional as conferring nonjudicial powers (131-43, 154+617). Constitutional Law, ¶70(1), 74.

5525. Petition—Bond—New bond, etc.—Before any public ditch or drain or other work specified in section 5523 shall be established under the provisions of this act, a petition signed by not less than 25% of the owners of the land described in such petition, but in no event shall more than eight signers be required, or by the supervisor of any township or the duly authorized officers of any city or village council, which township, village or city is liable to be affected by or assessed for the proposed construction or by the duly authorized agent of any public institution, corporation or railroad whose lands or property will be liable to be affected by or assessed for the expense of the construction of same or by the state board of control or its duly authorized agent, setting forth the necessity thereof that the same will be of public utility and will promote the public health, the description of the starting point, the general course and the terminus of same together with a description of the lands over which the proposed ditch or improvement passes, and that the petitioners will pay all costs and expenses which may be incurred in case the proceedings are dismissed, or for any reason no contract for the construction thereof is let, shall be filed if for a county ditch with the county auditor and if for a judicial ditch, with the clerk of the district court.

Upon the filing of such petition and before any action is taken thereon, one or more of such petitioners shall make and file a bond payable to the county in the sum of not less than two thousand dollars, with good and sufficient sureties to be approved by the officer with whom the same is filed, conditioned to pay all costs and expenses which may be incurred in case the proceedings are dismissed or for any reason no contract is entered into for the construction of the ditch or drain petitioned for. If it be made to appear at any time prior to the letting of the contract for the construction of such ditch or drain, that the bond of the petitioners is insufficient, either in amount or as to surety, to protect the county from loss on account of any cost or expense incurred or to be incurred, the court or the board may, and it shall be its duty, to require, a further and additional bond and all further proceedings shall be stayed until such bond is furnished, and in case such additional bond is not furnished within ten days from such notice, the proceedings shall be dismissed.

Any party signing such bond, either as surety or principal, or a majority of the petitioners, may at any time subsequent to the filing of the engineer's report, and prior to the letting of the contract, pay the costs and expenses incurred to that time, and upon ten days' notice in writing to the petitioners of their intention so to do, cause such proceedings to be dismissed, unless one or more of the petitioners in the meantime cause a new bond to be filed in lieu of the former one. (Amended '17 c. 441 § 4)

1907 c. 448 §§ 3, 5, 17, cited—122-504, 142+899.

In general—Application to construction of rural highways (see 125-325, 146+1110).

An order directing a survey and appointing an engineer is not a final determination of any rights of persons who might be affected by the establishment of the proposed ditch so as to support certiorari (134-435, 159+965). Certiorari, ¶16.

The act of 1909 confers on the district court or judge thereof jurisdiction of a drainage proceeding, though the proposed ditch is wholly within one county, and does not benefit or damage land in an adjoining county (131-43, 154+617). Drains, ¶26.

Constitutionality—The act of 1909, in conferring jurisdiction on the district court of proceedings for a ditch located wholly within one county and not benefiting or damaging lands

in an adjoining county, is not unconstitutional as conferring nonjudicial powers (131-43, 154-617). Constitutional Law, §70(1), 74; Drains, §26.

Bond—In an action on the bond given under this section, the proceedings of the county board cannot be collaterally attacked on the ground that the viewers appointed under § 5528 were disqualified by interest; such defect not being jurisdictional (129-151, 151+897). Drains, §39.

Amount of bond (see 134-435, 150+965). Drains, §29.

Petitioners executing a bond are liable to the county, which in good faith proceeds with the petition, though the description of the route and termini of the ditch in the petition is so defective as to render the proceeding invalid on jurisdictional grounds (124-495, 145+380). Drains, §29.

Where the engineer took the oath, acted in the ditch proceedings, and received his compensation and expenses from the county, it will be presumed, in the absence of evidence, that he gave the bond required in this section (123-437, 143+970). Evidence, §83(4).

Petition—Amendment—Jurisdiction—An amendment of the petition, made upon notice, by which the object sought to be attained was preserved, though the source and the course of the ditch was changed, did not oust the court of jurisdiction, though the original petition was still technically pending (131-43, 154+617). Drains, §28, 41.

A petition is a jurisdictional prerequisite to the authority of the county board to proceed, and where the board denies a petition to establish a particular drainage system described in a petition its power in such proceeding terminates (161+378). Drains, §35.

[5525]—1. **Limit of expense of survey—Bond**—In all drainage ditch proceedings in which a survey of the line of the proposed ditch has been directed by order of the court or county board, the expense of such survey shall not exceed the penalty named in the bond given by the petitioners in said proceeding and no claims in excess of such amount shall be audited or paid by direction of the court or board unless in any such proceeding one or more of the petitioners therein shall within such time as the county board, in case of a county ditch, or the court, in case of a judicial ditch, shall direct, make and file a bond with sufficient sureties in such amount as such county board or court shall direct, conditioned as required by section 5525, General Statutes 1913. ('17 c. 455 § 1)

5526. Appointment of engineer—Oath and bond—Duties—Report—Duties of auditor—Notice of hearing—Order—Survey and report—Powers of engineer, etc.—Upon the filing of the petition and bond as herein provided, the county board in a county ditch proceeding and the judge of the district court in a judicial ditch proceeding, shall within 30 days thereafter by order appoint a competent and experienced civil engineer, and direct him to proceed and examine into and report within the time fixed in said order to said board or court all matters necessary and essential to disclose the practicability, necessity and advisability of the construction of the proposed ditch or improvement, and the engineer so appointed shall within 10 days thereafter take and subscribe an oath to faithfully perform the duties assigned to him according to the best of his ability, and shall give a bond in the sum of \$5,000 with good and sufficient surety, payable to the county or counties affected by the proposed ditch or improvement, for the benefit of such county or counties, and also for the use of all parties aggrieved or injured by any negligence or malfeasance on the part of said engineer, conditioned that he will diligently, honestly, and to the best of his skill and ability perform his duties as such engineer in said proceeding, said bond to be approved by the auditor or the clerk, as the case may be, and thereupon said engineer shall without delay proceed and examine all matters named and referred to in said petition, and make such preliminary survey of the territory likely to be affected by the proposed improvement as will enable him to fully determine whether the same is necessary or practicable and report accordingly, and if some other or different plan than that described in the petition is found practical, said engineer shall so report, giving such detail and information as will be necessary to fully inform the court or county board on all matters pertaining to the practicability or feasibility of the proposed plan either as outlined in said petition or according to some other or different plan that may be designated or recommended by said engineer, but it shall be his duty to outline and designate all changes whether by extension, adding main laterals or otherwise that may be necessary to make the plan of the proposed improvement practicable and feasible, showing the probable size, character and cost of such laterals, and if

the construction of a ditch or drain is involved in the proposed improvement, said engineer shall especially examine and report the nature and capacity of the outlet and any extension that may be necessary to supply the same, and if he finds the improvement petitioned for is feasible, he shall include in his report a map of the proposed improvement, giving the description of the different tracts of land likely to be affected, and outline thereon any recommended changes, and give so far as known, the names of the owners of the property and corporations affected, and the probable area that is likely to be drained or affected by the proposed improvement, and such other information as the board or court may order.

Upon the filing of the report of the engineer as herein provided with the county auditor or clerk of the district court, as the case may be, it shall be the duty of said auditor to immediately notify the county board, or the clerk, the judge of the district court of the filing of said report, and the said auditor or said clerk with the approval of the judge, shall fix a time for the hearing thereon, not to exceed 30 days from the date of filing thereof, and within 10 days thereafter shall by mail notify the several petitioners and the owners of the several tracts of land affected by the proposed proceeding as shown in the engineer's report, of the time and place of said hearing, and at such time and place fixed, said engineer shall attend before said county board or judge of the district court, and make such explanation and supply such information as may be necessary to fully inform said board or court of all facts named or referred to in his report, and such other facts as affect or relate to such improvement petitioned for or as recommended by him, and the petitioners and all other parties interested may appear and be heard, and if upon full hearing, it shall appear that the proposed improvement is not practical and no plan is reported by the engineer whereby it can be made practical, or is not of public benefit or utility, or that the outlet is not of sufficient capacity, then said petition shall be dismissed, but if the county board or district court shall be satisfied that the proposed improvement as outlined in said petition or as modified and recommended by the engineer is practical, that there is necessity therefor, and that it will be a public benefit and promote the public health, and have an outlet of sufficient capacity, then said board or court shall so find and by said order shall designate the changes that shall be made in the proposed improvement from that outlined in the petition; said changes may be described in general terms, and shall be sufficiently described by attaching to said order and said petition, a map drawn by said engineer outlining the proposed improvement thereon, and the changes made, and thereafter said petition shall be treated as modified accordingly. Upon the filing of said order, said board or court shall order said engineer or any other engineer, if a change of engineers shall be determined, to proceed and make a detailed survey and furnish all necessary plans and specifications for the proposed improvement, and report the same to said board or court with all reasonable dispatch, and in case of a change of engineers, each new engineer shall make and file the oath and bond as provided in this section.

Upon the filing of such order, such engineer shall forthwith make a correct survey of the line of said ditch, drain, creek or water course, and of the branches thereof, if any, from its source, or sources, to its outlet, or outlets; and he shall cause stakes or monuments to be set along said line, numbered progressively up or down stream, each one hundred feet; and he shall make a computation of the number of cubic yards of earth to be excavated and removed from said ditch, drain, creek or water course between each of the one hundred foot stakes, and the estimated cost per cubic yard for the removal thereof, and shall sum up the total number of cubic yards of earth to be excavated and removed for the entire length of such ditch, drain, creek or water course, and shall make an itemized tabulation of all cleaning of obstructions of water courses, building of flumes, of other wood or masonry work, construction of fences for protection of the ditch, and construction of bridges or other additional construction work found necessary, together with the estimated cost thereof, and shall make an estimate of the total cost of laying out, establishing and constructing the whole work (including branch ditches, if

any) and including all preliminary and other expenses connected therewith, and with the inspecting and certifying to the work when and as the same is completed. He shall also, in tabular form, give the depth of cut, width at the bottom and width at the top, at the source, outlet, and at each one hundred foot stake or monument of said ditch, creek or water course; and he shall specify the time, so far as practicable, and the manner in which the work shall be done, and may for that purpose set a different time for completing the several contracts, and also for completing any station or stations included in each contract, and shall have power, when he finds it necessary, to provide for running said ditch under ground, through drain tiles, or other materials, as he deems best, by specifying the size and kind of tile, or other material to be used in such underground work, and shall estimate the cost of the same, as a part of the total cost of the work.

He shall also include in his report a form of contract as complete in its provisions as practicable and which shall contain detailed and complete specifications by direct statement, or by reference to other parts of the report, and shall provide for all necessary supervision of the laying of tile, excavation and other construction work of the contractor or contractors, and which shall define the relation which shall exist between the county and the contractor or contractors and which shall give the engineer the right with the consent of the county board or the judge of the district court, as the case may be, to modify his reports, plans and specifications as the work proceeds, and as circumstances may require, provided no changes are made that will substantially impair the usefulness of any part of the ditch, or substantially alter its original character or increase its total cost by more than ten per centum (10%) of the total original contract price for the construction thereof, but no such increase shall make the cost of the ditch or work exceed the total estimated benefits as found by the court or board, which added cost is to be paid by the county to the contractor at the cost fixed for like work in said contract, and the county attorney, upon request from the engineer, shall assist him in the preparation of said form of contract, specifications and provisions. In locating a public ditch, drain, creek or water course or the branches thereof, the engineer may vary from the line described in the petition, as finally adopted by the board or court, or from the starting point thereof, as he deems best, and as he finds necessary for the complete drainage of the lands likely to be assessed for the ditch originally petitioned for, and, provided, that he shall have authority to specify such branch ditch, or ditches, as in his opinion may be necessary to give owners of lands likely to be assessed for the construction of the main ditch as finally modified by the court or board, the full benefit thereof, and he shall do the same things and report the same data, tabulations and estimates with reference to said branches as are required by this law with reference to the public ditch, drain, creek or water course or the branches thereof, described in the petition; provided, that such branch ditch, or branch ditches may either be opened at the same time and in the same manner as the main ditch, or the engineer may only locate said branch, ditch or ditches for future construction, but he must fix a time limit as to the construction of any such branch ditches. In all cases in which the route proposed is along highways already established, the engineer shall locate the ditch at sufficient distance from the center of such highway to admit of a good road along the central line thereof. That earth taken from the ditch shall be so placed, and the brush or timber taken from the right-of-way of such ditch may be so placed upon the roadway as to form a turnpike, which shall be provided with sufficient and suitable culverts or openings so as not to obstruct the natural flow of surface water in time of high water, and no nearer to the margin thereof than two feet. When there is not sufficient fall in the length of the route described in the petition to drain the land adjacent thereto, or when for other reason it appears expedient, he may shorten or extend the ditch from the outlet named in the petition far enough to reasonably effectuate the purpose for which the work is intended. When, in his opinion, it will not be detrimental to the usefulness of the whole work or to the usefulness of any extensive section of the whole work, he shall, as far as practica-

ble, locate the ditch on division lines between lands owned by different persons; and he shall, as far as practicable, avoid laying the same diagonally across lands, but he shall not sacrifice the general utility of the ditch to avoid diagonal lines.

Where a more feasible outlet will be had the engineer may, with the approval of the board or court first obtained, shorten or extend the ditch from the outlet described in the petition far enough to effectuate the purpose sought, and where more economical or better results will be accomplished, provide for different parts of the drainage to flow in different directions with more than one outlet, and in all such cases the viewers shall assess benefits and damages to such additional lands. It shall not be necessary for such ditches to connect if they embrace the drainage area intended to be affected by the petition instituting the proceedings. Where no practical outlet can be had but through the lands of an adjoining state, he shall procure a description of the necessary right-of-way and probable cost thereof and estimate the cost of constructing an outlet through the same. Provided further, that if in any pending proceedings an engineer has been appointed to make a survey as contemplated by chapter 44, General Statutes 1913, and said engineer has made such survey but has not filed his report, the preliminary survey provided for in this act shall not be required.

In making a survey the engineer shall fix and establish suitable bench marks upon permanent objects not more than one mile apart along the side of the line surveyed, so that the same will not be destroyed in constructing the system and carefully note the location thereof in his field book.

The engineer shall enter all field notes made during the survey and construction into a field book properly ruled, make a complete and accurate map and profile of the drainage system as surveyed by him upon good tracing cloth; such map shall be drawn to a scale, show the number of the section, township and range in which the lands affected are situated, the division of such lands into farms, the number of acres, and the names of the owners thereof, the location of the buildings thereon, each station number in figures, location of the bench marks, the public streets, highways and railroad right-of-way affected, the names of the county, township and municipality in which such lands or any part thereof are situated, and all other matters necessary to the understanding of the board or of the court. The profile shall be drawn on a scale, show the elevation, grade, depth of cut, size of tile, and the elevation in figures of each branch and lateral at its source and outlet. When the work of construction is completed, or when for any cause the engineer ceases to longer act as such he shall cause the original maps, profiles, and field books to be filed, in the office of the clerk or auditor where such proceedings are pending. (Amended '17 c. 441 § 5)

Cited (129-151, 151+897; 123-437, 143+970).

In general—The county, recognizing the necessity and value of the extra work, having paid the contractor not only the 10 per cent. permitted by this section, but \$600 in addition, though the county auditor had not consented to any part thereof being ordered by the engineer, the money so paid should be applied upon the extra work performed by the subcontractor, and no part thereof should go to the contractor, though he claimed that the extra work was done without his knowledge and consent, there not being a sufficient amount to pay the subcontractor the stipulated price for the extra work. A subcontract provided that the contractor should pay for "excavation of extra yardage over and above the estimate, required to be done by the engineer, the sum of 9½ cents per cubic yard." Other provisions required the work to be done according to the plans and specifications. Held, that the extra yardage and work must be limited to such as the engineer might lawfully require under this section, which became a part of the subcontract (135-5, 159+1072). Drains, ¶49.

Complaint on engineer's bond held not subject to demurrer on the ground that it does not appear from the statute and complaint that it was the duty of the engineer to supervise the laying of the tile (122-504, 142+899, Ann. Cas. 1914D, 945). Drains, ¶29.

Bond—Where the bond contained the statutory conditions, and also other conditions, it will be so construed as to give effect to the statutory condition, unless the language of the bond precludes such construction (122-504, 142+899, Ann. Cas. 1914D, 945). Bonds, ¶50.

Changing route and extent of ditch—That the route of the ditch, as finally recommended by the engineer and established by the court, was not the route called for by the petition or the amended petition, did not invalidate the order, the same lands being benefited by the ditch as established (131-43, 154+617). Drains, ¶41.

An engineer, exercising the care, skill, and ability usually shown by the members of his

profession, is not liable in damages for an honest error of judgment in extending a ditch beyond the limits named in the petition. Evidence held to show that the extension was desirable, practicable, and necessary (129-210, 152+406). Drains, ~~§~~38, 41.

Where a county board refuses to establish the ditch petitioned for, the last paragraph of this section, constituting the proviso, does not authorize the board to establish a ditch wholly within a drainage district other than the one sought to be drained by the ditch petitioned for, though the starting point of the ditch asked for is within such other drainage district (161+378). Drains, ~~§~~26.

1907 c. 448 §§ 3, 5, 17, cited—122-504, 142+899, Ann. Cas. 1914D, 945.

5527. Reports of engineer—Duties of court and county board—He shall thereupon make a detailed and complete report of his doings, which shall include all maps, profiles, specifications and matters herein provided for, and submit therewith the necessary plans and specifications and a description of the lands over which the ditch or ditches is or are surveyed. Such report shall give the names of assistants and laborers and the time each was employed by or under him, together with his own time on the work, and every other item of expense by him incurred in and about the said work, and he shall forthwith file such report with the auditor after having subscribed and sworn to the same. All reports, except reports as to assistants and expenses incurred, all plans, specifications, maps or profiles herein required to be made by the engineer shall be made by him in triplicate and filed in the office of the county auditor or the clerk of the district court, as the case may be, one for each auditor, one for the state drainage commissioner and one with a copy of the contract shall be delivered to the contractor at his request at any time after the execution of the contract.

Every such engineer shall every two weeks after the beginning of his work and during the time he is engaged in the same, up till letting of contract, make an accurate report of all expenses connected with such drainage project incurred by him or under his direction and file the same with the auditor or clerk, as the case may be, and under no circumstances shall he incur a greater expense on account of such ditch project than the bond provided by the petitioners calls for.

It shall be the duty of the court in the case of all ditches established by it to cause all contracts entered into under the provisions of this section to be carried into effect and to cause all ditches and drains so contracted for to be constructed according to such contracts and the plans and specifications of the engineer; and it shall be the duty of the county board in the case of all ditches established by it, in like manner, to cause all such contracts to be carried out as above provided. (Amended '17 c. 441 § 6)

Cited (129-151, 151+897).

1907, c. 448 §§ 3, 5, 17, cited—122-504, 142+899.

5528. Viewers—Meeting—Duties—

The viewers and the jury on appeal in assessing benefits on the basis of added land should have in view an apportionment of the land in the manner that would obtain in a partition suit. The jury is required to ascertain the amount and value of the land added to a shore owner by the drainage of a meandered lake, but the jury should not include therein dry and usable land lying between the government meander line and the present ordinary high-water mark of the lake. Jury on appeal held to have adopted a wrong and inequitable basis for assessing the benefits to accrue to appellant from added acreage from the lake bed to be drained (130-176, 153+858). Drains, ~~§~~79.

Objection that the viewers were disqualified because of interest in land that might be affected could not be raised for the first time in an action on a bond to pay expenses (129-151, 151+897). Drains, ~~§~~38, 39.

In view of the requirement of § 5533, that the county board order the damages paid, the viewers should find the amount of the damages, and not merely deduct the damages from the benefits (122-392, 142+802). Drains, ~~§~~32.

5530. Report of viewers—Persons interested not to be present, etc.—Said viewers shall forthwith file with the county auditor a report of all their doings and findings in detail, including expenses and the actual time they were engaged. They shall in every case completely perform every duty by this act imposed upon them (except in case of a re-reference, as hereinafter provided), within thirty days from the date of their first meeting; provided, that if the water be so high, or the weather so inclement, or such unavoidable accidents occur as in the opinion of the board of county commissioners to practically

and reasonably prevent them from so doing, the necessary delay caused thereby may be excused by such board; but the report of said viewers must in such case state the reason for such delay, and if such reason be not deemed sufficient by the board of county commissioners such viewers shall forfeit one-half of the compensation hereinafter provided. No attorney, engineer or any other person interested in the ditch shall be with the viewers while they are considering and determining the assessments of benefits and damages to be fixed by them. (Amended '17 c. 441 § 7)

5531. Final hearing—Notice—Rehearing—Reassessment—Change of course—

In general—The county board may either establish or refuse to establish a ditch at a special meeting called at a rehearing of petition and report, when the final order has been held void for failure to give proper notice (124-495, 145+380). Drains, ¶34.

On reversal by the district court of an order for the drainage of a meandered lake, because the lake was not subject to drainage, the county board could proceed with the drainage project, under this section, in so far as it did not involve draining the lake (128-69, 150+209). Drains, ¶36(2).

Evidence held to justify the finding of a court as to the amount of preliminary expense (124-495, 145+380). Drains, ¶38.

After the county board has established and ordered constructed a state rural highway, it cannot abandon the project, and the auditor has no discretion with respect to letting the contract, and cannot refuse to consider proper bids on the ground that the enterprise has been abandoned (132-36, 155+1048). Highways, ¶79(1), 113(1).

Sufficiency of notice—Posting notices in a township, within which a village, connecting its drainage system with the ditch, lies, is sufficient (159+758).

Changes in ditch—Under this section, as amended, the elimination by the county commissioners of 4½ miles of branch ditches in a drainage project in which the main ditch was 22 miles long, was not such a departure from the plan petitioned for as to invalidate the proceedings; it appearing that the elimination was advantageous to the project (130-176, 153+858). Drains, ¶41.

Collateral attack—Collateral attack on proceedings (129-151, 151+897). Drains, ¶39.

5532. Report of engineer, etc.—Order establishing ditch—

125-325, 146+1110; 134-435, 159+965.

The word "establish" need not appear in the order (159+758).

Collateral attack on proceedings (129-151, 151+897). Drains, ¶39.

A petition being a jurisdictional prerequisite to the authority of the county board to establish a ditch, where a petition is denied, the authority of the board terminates, and it cannot order the establishment of a ditch wholly within another drainage district, though the starting point of the ditch asked for in the petition is within such other drainage district (161+378). Drains, ¶26.

Abandonment of projected rural highway established and ordered constructed by the county board (see 132-36, 155+1048). Highways, ¶79(1). See, also, note under § 5531.

5533. Damages—How paid—

131-372, 155+626; note under § 5534, post.

In view of the requirement that the county board shall order the damages paid, it is necessary for the viewers, and for the jury on appeal, to make a separate award of damages, and not merely deduct the damages from the benefits, and assess the balance (122-392, 142+802). Drains, ¶32.

Abandonment of project for construction of state rural highway (see 132-36, 155+1048). Highways, ¶79(1). See, also, note under § 5531.

5534. Appeal to district court—Jury trial—Any person or corporation aggrieved thereby may appeal from an order of the county board made in any ditch proceeding and entered upon its records, determining either of the following matters:

First: The amount of benefits to any tract of land or owner of any public or corporate road or railroad.

Second: The amount of damages allowed to any person, persons or corporation or assessed to any tract of land.

Third: Refusing to establish such proposed ditch.

Any person so appealing on the first or second ground may include and have considered and determined benefits or damages affecting lands other than his own in such ditch proceeding.

He shall specify in his notice of appeal the particular land and the assessment appealed from, and such notice of appeal shall be served upon the owner or occupant of such land or upon the attorney who represented such owner in the proceedings before the court or board. In case such owner has made

no appearance by attorney or otherwise in such ditch proceeding then said notice of appeal shall be served upon the clerk or auditor where said proceedings are pending.

To render such appeal effectual such appellant shall file with the county auditor within thirty days from the date of such final order a notice of appeal which shall briefly state the grounds upon which such appeal is taken, accompanied by an appeal bond to the county board with sufficient surety in not less than \$250.00 to be approved by the auditor of the county in which such appeal is taken conditioned that said appellant will duly prosecute the appeal and pay all costs and disbursements that may be adjudged against him and to abide the order of court. Within 30 days after such filing the auditor shall make a complete transcript of all the papers and proceedings on file and of record in his office so far as the same pertain to the premises or matter on account of which the appeal is taken together with the notice of appeal and file the same in the office of the clerk of the district court of the county. For such services the auditor shall receive the sum of \$3.00.

Any person deeming himself aggrieved in a county or judicial ditch proceeding by an order of the county board or the court, as the case may be, determining the amount of his benefits or damages, or the benefits or damages assessed upon lands other than his own as hereinbefore provided, may demand a jury trial to determine the amount of such benefits or damages, as the case may be, on account of the construction of such ditch. Such demand shall be in writing, signed by the party making the same, or by his agent or attorney, and with a copy of the proposed bond shall be served upon the attorney for the petitioner, if any, and if not, then upon the county attorney of the county wherein proceedings were instituted and the original bond and notice, with proof of service as herein required, shall be filed in the office of the clerk of the district court within and for the county in which the proceeding is pending within 20 days after the filing therein of the order confirming the report of the viewers. In a judicial ditch proceeding such demand shall be accompanied by a bond in the sum of at least \$250.00 with sufficient sureties to be approved by the clerk of the district court wherein such proceedings were commenced, said bond to be conditioned that demandant will pay all costs and disbursements adjudged against him and further conditioned to abide the order of the court therein. The issues raised by such demand shall stand for trial and shall be fully tried and determined at the next term of the district court held within the county in which such proceedings were commenced, or in such other county in which such trial shall be held as hereinbefore provided, beginning after the filing of such demand, and shall take precedence of all matters of a civil nature in said court. If there be more than one demand triable in one county, they may be consolidated and tried together, but the rights of such demandants shall be separately determined by the jury in its verdict. If the demandant or appellant fails to recover more damages than awarded to him or fails to reduce the amount of benefits assessed against his land, then the costs of such trial shall be paid by the demandant or appellant as the case may be. The construction of any such ditch shall not be hindered, delayed or prevented by the prosecution of any appeal or demand herein mentioned. In case of demand for a jury trial as to assessments of damages or benefits to land situated in a county other than the county wherein such ditch proceedings were instituted and are pending, and in case such demandant for jury trial so requests in such demand, such trial as to the land situated in such other county shall be held at the next term of the district court of the county wherein such lands are situated, and in such case the clerk of the district court where such demand is filed shall make, certify and file in the office of the clerk of the district court of the county where such trial is to be had a transcript of the papers and documents on file in his office in such proceeding so far as pertain to the matter on account of which said appeal is taken. After such trial the clerk of the district court of the county where such action is tried shall make, certify and return the verdict of the district court of the county wherein such proceedings were instituted and such verdict or order

shall be entered and enforced as a part of the proceedings in such last mentioned county. (Amended '17 c. 441 § 8)

128-69, 150+209; notes under §§ 5531, 5589.

Demand for jury—Neither § 7746 nor § 7786 gives the court power to extend the time for demanding a review by a jury of the order of the court fixing the benefits and damages (131-372, 155+626). Drains, ¶82(1).

A demand for jury trial held sufficient, though the appellant by the demand did not connect himself with the title to any property assessed in the proceeding. (134-291, 159+629). Jury, ¶25(8).

A demand for a jury trial under this section is sufficient, if it recites the statutory conditions upon which the right depends, and from it the assessment and land intended are reasonably ascertainable (133-113, 157+1004). Jury, ¶25(8).

A demand for a jury trial, though not describing the land assessed, the description appearing in the proceedings in which the appeal was taken, held sufficient (134-290, 159+629, following 133-113, 157+1004). Jury, ¶25(8).

Bond on appeal—When one landowner conveys to another pending the ditch proceeding, and both join in the demand for a jury trial, only one bond is required (133-113, 157+1004). Drains, ¶29.

Review—When judgment is entered, the propriety of the dismissal of a demand for a jury trial is reviewable upon an appeal from the judgment (133-113, 157+1004). Drains, ¶36(4).

Collateral attack—Collateral attack on proceedings (129-151, 151+897). Drains, ¶39.

Finding of viewers—The court should instruct the jury that the findings of the viewers should have no effect on their verdict, a mere statement that they were not bound by the report of the viewers not being sufficient (122-392, 142+802). Drains, ¶36(4); Trial, ¶133(1).

Care should be taken that the findings of the viewers upon the subject of damages and benefits do not reach the jury on appeal (130-176, 153+858). Drains, ¶57.

Damages and benefits on jury trial—In view of the requirement of § 5533 that the county board order the damages paid, the jury on appeal should find the amount of the damages, and not merely deduct the damages from the benefits and assess the balance (122-392, 142+802). Drains, ¶32.

Where land, prior to its drainage, was boggy, the jury on appeal was warranted in finding that the landowner suffered no damage on account of loss of water supply (130-176, 153+858). Drains, ¶57.

Abandonment of rural highway—Abandonment of project for establishment and construction of state rural highway (see 132-36, 155+1048). Highways, ¶79(1). See, also, note under § 5531.

5536. Letting of job—Within ten days after the filing in the office of the auditor or clerk as the case may be, of the order establishing a ditch or drain, the auditor, chairman of the county board and the clerk of court, or a majority of them in the first instance, and in the second instance, the auditors of the respective counties meeting for that purpose at the office of the auditor of the county in which the proceedings are pending with the chairman of the county board and clerk of court of said county, or a majority of them, shall proceed as hereinafter provided, to sell the job of digging and constructing the entire work either as one job or in one or more linear sections of 100 feet each, each of said sections to be known and numbered by the stake or monument set by the engineer at the foot of each such section as shown in the engineer's report, commencing at the one, including the outlet and thence in succession up the stream to the one including the source. The auditor or auditors, as the case may be, together with such chairman of the county board and clerk of court, or a majority of them, may with the approval of the engineer, sell separately from the jobs of excavation, any jobs of building of flumes or other wood or masonry work, fencing or other construction work specified in the engineer's report. The auditor or auditors as the case may be, with such chairman and clerk, or a majority of them, may if deemed for the best interests of all concerned, let a separate contract for the furnishing of material for the construction of such system. The auditor or auditors, as the case may be, with such chairman and clerk, or a majority of them shall contract in the name of the county or in the name of the respective counties as the case may be, each acting by and through its auditor, chairman and clerk, with the party to whom any of such jobs of construction work or any section or sections is or are sold, requiring him to construct the same in the time and manner and according to the specifications, provisions and form of contract upon which the ditch is established, and shall take from him a bond in the penal sum of not less than 75% of the entire contract price with sufficient surety payable

to the county or to the respective counties, or any two or more of them, as the case may be, for the use of such county or counties, as the case may be and also for the use of all persons who may show themselves to be aggrieved or injured by any breach thereof, or of the contract for which such bond is given; to be by said auditor or auditors, and such chairman and clerk, approved, conditioned that such party shall faithfully perform and fulfill his contract, and pay all damages which may accrue by reason of the failure to complete the work in the manner and within the time required in the contract therefor, and otherwise conditioned as in this act provided, which bond shall include a stipulation that no change, extension, alteration or addition to the terms of the contract or specifications shall in any wise affect the obligation of the principal or principals or surety on said bond. The auditor of the county in which the proceedings were taken shall give notice of the letting of such contract by publication for three successive weeks in the official paper of such county of the time when and place where such contracts shall be let to the lowest responsible bidders; and in such notice shall state the approximate amount of work and the estimated cost and shall invite bids for the work as one job, and also for any one or more of such sections or any one or more of such construction jobs, and if a separate contract for the furnishing of material shall be deemed advisable such notice shall contain all matters hereinbefore specified, so far as applicable, and a statement of the kind and size of tile, the number of lineal feet of each size required, and the general specifications of all other materials required, the estimated cost thereof, the time within which the same are to be furnished, with such other matters as he may deem proper for the information of bidders. He shall reserve the right to reject any and all bids and no bid shall be entertained which exceeds more than thirty per cent of the estimated cost of the construction of the part of said work covered by said bid; nor unless accompanied by his certified check payable to the auditor or to the respective auditors, as the case may be, for not less than ten per cent of the bid; and said auditor and auditors, chairman and clerk, may adjourn such letting from time to time until the whole work shall be taken and with the approval of the engineer may let any one or more of such sections or any one or more of such construction jobs. When the estimated cost of the construction is more than \$3,000.00, the auditor may also advertise such letting in a trade paper. If no bids are received which can be entertained, the bondsmen for the petitioners may have the right at any time to pay the costs of the proceedings, and dismiss the same. The engineers shall attend to the letting of the work, and no bid shall be accepted without his approval, as to the compliance with plans and specifications. (Amended '15 c. 300 § 2; '17 c. 441 § 9)

Cited (133-54, 157+901).

A county ditch contractor's bonds held valid statutory obligations only to the extent of the fair import of their conditions. Such bonds construed as to subject-matter thereof (125-211, 146+359, Ann. Cas. 1915C, 688). Drains, ¶49.

If a third person takes over a construction contract from the original contractor, the surety on the contractor's bond is not liable for the work done by such third person (131-243, 154+1092). Principal and Surety, ¶102, 162(3).

The contract let is subject to the control of the legislature, and hence § 5541, in its retroactive aspect, cannot be held to impair contract or vested rights (123-59, 142+945). Constitutional Law, ¶103, 121(2); Drains, ¶2(2).

Abandonment of project for the establishment and construction of a state rural highway (see 132-36, 155+1048). Highways, ¶79(1). See, also, note under § 5531.

The provision requiring the auditor to advertise for bids within ten days after the order has been made for establishment of the highway is directory, and not mandatory (132-36, 155+1048). Highways, ¶113(3).

5537. Contract and bond—Extensions—Tile work, etc.—The bond and contract shall be attached to each other and the contract shall contain the specific description of the work to be done, either expressly or by reference to plans and specifications, and refer to the number of the section or sections, as provided for in the preceding section and shall provide that the work shall be done and completed as provided for in the report of the engineer, and subject to his approval and that of the auditor or auditors, as the case may be.

Such contract shall be drawn to the satisfaction of the engineer and the

county attorney. Every such contract and bond shall embrace all the provisions provided by law for the giving of bond by contractors for public works and improvements and for the better security of the contracting county or counties and of the parties performing labor and furnishing material in and about the performance of such contracts and shall provide that time shall be the essence of the contract, in that if there should be any failure to perform the work according to the terms of said contract, within the time limited therein, originally or by extension, the contractors shall forfeit and pay to the county in which the portion of the work in default shall be located, a certain sum, to be named therein, and which shall be fixed by the county auditor or auditors, as the case may be, for each day that such failure shall continue.

The bond shall expressly provide that the bondsmen shall be liable for all damages resulting from any such failure, whether the work be resold or not, and that any person showing himself injured by such failure may maintain an action upon such bond in his own name and that such actions may be successive in favor of all persons so injured. Such contractor shall be considered a public officer and such bond an official bond within the meaning of the statutory provisions construing such official bonds, of public officers as security to all persons and providing for action on such bonds by any injured party in the district court.

No extension of time shall be granted by the auditor or auditors, as the case may be, unless applied for in writing to the auditor or auditors, as the case may be, stating to his or their satisfaction good and sufficient reasons therefor; nor shall any extension affect the right to enforce such forfeiture, if any, as shall occur after the time originally limited and before such extension, or accruing after the limit of the extension. One such extension may be made for a period of time not exceeding one year without notice.

No extension after the first above provided for, shall be granted until a hearing upon such application shall be held after such notice as hereinafter provided. In such case, the auditor of the county wherein such drainage proceedings were instituted, shall cause to be prepared and published as hereinafter provided, a brief notice setting forth the filing of such application and setting forth the time and place when and where the said application will be heard, considered, and determined by such auditor or auditors, as the case may be. At the time and place so designated the said auditor issuing such notice and if present such other auditors upon whom service of such notice is herein provided for, shall proceed to hear, consider and determine such application and shall make written order in relation thereto.

Such notice of hearing shall be published for two successive weeks prior to such hearing in each county affected by such drainage proceedings in the newspaper therein duly designated to publish the delinquent tax list for such year, and shall be served upon the county auditor of each such county so affected. The expense of such hearing and the publication and service of such notice shall be paid by such contractor applying for such extension.

Provided, that whenever tiling is used in the construction of any ditch or drain or any part thereof and the petition for said drain so requires, or at any time previous to the commencement of advertising for the sale of the job or jobs for the construction of the same upon a request of a majority of the petitioners in writing therefor, filing with the county auditor of the proper county, such contract shall require the contractor of the whole tile work or the contractor of any part thereof, as the case may be, to guarantee all of such tile work done by any such contractor for a period of three years after the completion of any such contract, against any fault or negligence on the part of any such contractor and any failure during said period of any part of said tile work constructed by any such contractor, to accomplish the purpose of drainage for which it was intended, shall be prima facie evidence that the same is due to the fault or negligence of said contractor. Notice of such request shall be given by the county auditor in the advertisement for sale of such job or jobs.

The said contractor shall give a good and sufficient bond for the performance of such undertaking and contract. The acceptance of such tile ditch by the engineer or county board shall not relieve or exempt said contractor or his bondsmen from the liability therein imposed on said contractor for said three-year period.

Provided, further, that at the end of each year of each season's work, after giving such contractor's bond, and prior to the completion and acceptance of such job of construction the contractor may make verified application to the county board in case of a county ditch, or in case of a judicial ditch, to the judge of the district court of the county where the proceedings were instituted, setting forth approximately the total yardage of excavation completed and total amount of other work completed, the contract price thereof and the value of the work theretofore certified as complete by the engineer, and the amount of money received by contractor, and further setting forth the amount then owing or unpaid by said contractor for labor or material already furnished in the matter of the completion of such contract, and asking an order reducing the amount of the contractor's bond.

Upon the receiving such application, the said judge of the district court or the said county board, as the case may be, shall proceed to hear, consider and determine said application upon such notice as shall be directed by such judge or by such county board respectively, and if upon such hearing, it is determined that no loss will result thereby, the said judge or the said county board may by order reduce the penalty of such bond to such a sum as shall be deemed advisable by such judge of such county board, as the case may be, but such reduction shall in no case exceed by more than twenty-five per cent the amount already paid to the contractor and such reduction shall not affect the validity or the enforcement, or in any manner otherwise affect the remaining amount of the penalty of such bond. (Amended '17 c. 441 § 10)

Cited (162+1054).

The provision of this section, declaring a contractor's bond an official bond and a contractor a public officer, places the contractor's bond, in respect to actions thereon, in the same position as other bonds of public officers. Work in dismantling a ditching dredge and reassembling the parts and putting the dredge in condition to perform a drainage contract, performed by an employé of the drainage contractor, is a necessary part of the work and a proper liability against the surety on the contractor's bond. Section 8249 requiring notice to be served before commencement of an action on a building contractor's bond, has no application to a bond given under this section (126-435, 148+454). Drains, ¶49.

A bondsman, who has undertaken to complete the work after default of the contractor, can not assert as a defense that the work has not been completed and accepted, to defeat an action on the bond by a claimant furnishing labor or materials (133-54, 157+901). Drains, ¶49.

The provision of this section declaring the contractor's bond an "official bond" held applicable to the bond given under § 5497, and that it is unnecessary to comply with § 8249, requiring notice to the contractor and his surety before action is brought on the bond (133-90, 157+998). Drains, ¶49.

5539. Reinstating and extending contract in certain cases—

Petition and writ in mandamus held not demurrable, as showing that contractors had forfeited their rights under a contract by delay in performance, where it appeared that an extension had been lawfully granted (123-50, 142+945). Drains, ¶49.

5541. Duties of engineer—Certificates—Payments, etc.—It shall be the duty of the engineer on being notified by the contractor that his job is completed, to inspect the same, and if he finds it complete according to the contract, plans and specifications he shall report that back to the county board or court, as the case may be, and give to the contractor a certificate stating that said Section or Sections (by number) or other jobs of construction, are completed according to the contract, plans and specifications as set forth in the report of said engineer.

Provided, that when the work for which such certificate is to be issued, affects more than one county, proportionate certificate shall be issued to each county. Upon the filing of such report of the engineer that any ditch or job has been completed, the board or court shall fix a day when it will meet or hear the same of which meeting ten days notice of mail shall be given by the auditor or clerk of court to all the land owners whose lands are assessed for benefits by the construction thereof, who are residents of the county, or whose

postoffice address is known. Service of such notice shall be sufficient if the same is mailed ten days before the date of such hearing; whereupon, if approved by the county board or court, as the case may be, and upon presentation and surrender of said certificate with such approval endorsed thereon to the auditor or clerk, of the proper county said auditor or clerk shall draw a warrant on the county treasurer of his county, in case of the auditor, and of the separate counties in case of clerk, for the proportionate amount found to be due from such county on said contract, according to such preliminary certificate, as herein provided; and that said warrant shall be paid out of the general ditch fund to be provided by the county board as hereinafter specified. Said warrant shall become due and payable out of said funds at once, and if there shall be no cash in said fund to pay said warrant when the same is presented the county treasurer shall endorse said warrant "Not paid for want of funds" and date and sign such endorsement, and the amount of said warrant shall draw interest at the rate of six (6) per cent per annum until called in by the treasurer or auditor of said county and paid.

At any time during the progress of the work of construction, the engineer may issue preliminary certificates for work done and approved or for material or supplies furnished and delivered along the line of said proposed ditch, or otherwise delivered according to the contract therefor and to be used for the construction or installment of tile or other enclosed drains or for bridges or culverts along the line of and as a part of said proposed ditch system; which preliminary certificates shall contain the station number or numbers of the work covered by such certificate, the actual yardage of the excavation certified, and the total value thereof according to the contract of construction, or in case the same is for material furnished, then an estimate of the total value of such material according to contract. Such certificates shall further show the percentage of such total value of the work or material to be paid by the county or counties, and if the proportion has been fixed by the district court, such certificate shall further show the proportion of such total value to be paid by the respective counties. Such certificate shall be executed in duplicate by the said engineer, or in such number as may be necessary and as many thereof marked "duplicate" shall be delivered to the contractor as there are counties affected, and such engineer shall further file one thereof with the county auditor of each county affected; provided, that except as hereinafter provided no engineer in drainage proceedings shall by preliminary certificate certify or recommend for payment and no county auditor shall cause to be paid a sum exceeding 85% of the total value of work done and approved or exceeding 65% of the total value of bridge and culvert material and not exceeding 50% of the total value of all other material or supplies furnished or delivered as such total value is shown by such preliminary certificate.

And provided further, that when the excavation work thereof on an open ditch or the construction work thereof on a tile system exclusive of the tile furnished shall be 50% or more completed and the contract of construction shall not be in default the engineer shall issue a further preliminary certificate allowing to the contractor 33 $\frac{1}{3}$ % of the retained 15% on excavation or construction and of the retained 35% on material and thereupon the auditor shall issue his warrant therefor payable as herein provided for payment of warrants issued after the full completion of the contract of construction.

In case where the total estimated cost of construction of any such drainage ditch shall exceed the sum of \$30,000.00 and where fifty per cent (50%) of the total amount of said excavation as shown by the engineer's report is complete and where the contract is not in default, the engineer may issue a further preliminary certificate setting forth the total value of previous construction work theretofore certified as complete by the engineer, the total amount of warrants issued to such construction contractors for such work, the total balance of sums retained by the county or counties involved, from preliminary estimates theretofore made, and the total percentage of the yardage of excavation theretofore finished and certified by engineer and the proportion of the cost of construction to be paid by the respective counties if more than one. Such further preliminary certificate shall be executed, deliver-

ed and filed by the engineer as other preliminary certificates provided for in this section and upon presentation thereof to the county auditor, such auditor shall thereupon forthwith issue to the contractors presenting the same his warrants for such county's proportionate share of 75% of the balance of such sums retained by the county or counties involved from preliminary estimates theretofore made as set forth in such further preliminary certificates provided for in this paragraph, provided that in case of ditch proceedings wherein the contract of construction has been entered into prior to the passage of this act, before the issuing and delivering of the said warrant to such contractors there shall be filed with the said county auditor the assent thereto in writing of the surety on such contractor's bond, such assent to provide that such payment upon such preliminary certificates shall not in any manner affect or reduce the liability of such surety upon such contractor's bond.

The provisions of this section shall apply to all public ditch proceedings heretofore or hereafter instituted, under any law of this state, except state and township ditches.

Provided, that no certificate or certificates of partial completion or of furnishing of material shall be furnished or delivered by the engineer unless the said certificate or certificates shall be accompanied by the engineer's written certificate that no loss will result from such partial payment. Provided, further, that the county or counties paying a preliminary estimate of the engineer on material furnished or delivered shall have a lien on the said material to the amount of all payments made thereon by such county or counties.

Provided, that the said certificate or certificates of the engineer in the matter of any county or judicial ditch proceedings of any other estimate or certificate required under any of the drainage laws of this state to be made by him, shall not constitute prima facie or other evidence of the truth of the contents thereof, or of the completion of any ditch or any part thereof by the contractor or otherwise, or of the fulfillment of the contract or part thereof.

It shall also be the duty of the engineer to inspect the laying of tile, excavation and all other work of construction from time to time, as provided for in the specifications and provisions in his report and as provided for in the contract for construction, and every thirty days during the progress of the work to report in writing to the county board or the judge of the district court as the case may be, as to all work completed since the last prior report, and his services for making such inspection shall be paid for at the rate and in the same way as his services in making his original survey and report. (Amended '15 c. 300 § 3; '17 c. 441 § 11)

This act is not unconstitutional as special legislation, in that the classification therein made is arbitrary (123-59, 142+945). Statutes, ¶97(3).

This section, in its retroactive aspect, cannot be held to interfere with a vested right or impair a contract let under § 5536, as the county, in conducting drainage proceedings, is the agency of the state, and the contracts let are subject to the control of the legislature (123-59, 142+945). Constitutional Law, ¶103, 121(2).

This section, in so far as it changes the mode of payment of compensation under drainage contracts existing at the enactment of the statute, held not invalid as the bestowal of a private gratuity out of the public funds without subserving a public purpose (123-59, 142+945). Counties, ¶153½.

Conclusiveness of judgment as to performance of contract for construction of a county ditch (125-481, 147+447). Judgment, ¶744.

1907 c. 448 §§ 3, 5, 17, cited—122-504, 142+899.

[5541—]1. Warrants, when no funds—Interest—That in all cases where a warrant shall be issued by the auditor of any county under and pursuant to the provisions of Section 5541 of the General Statutes of Minnesota for the year 1913, and there shall be no cash in the fund therein mentioned to pay said warrant when the same is presented, and the county treasurer shall endorse said warrant "not paid for want of funds," and shall date and sign said endorsement as in said act provided, then and in that event the interest on said warrant therein provided shall be paid on said warrant annually on the 1st day of July in each year until said warrant is called in and paid by said treasurer, or bonds are issued by the county to care for said warrants. Provided that this act shall not apply to warrants now issued and outstanding. ('15 c. 246 § 1)

5542. Bonds of county—The county board of each and every county wherein any drainage ditch is proposed to be wholly or partly located and established, or wherein lands are located which are assessed for benefits by reason of the construction thereof, are hereby authorized after the lien statement prepared by the county auditor has been filed in the office of the register of deeds, to issue the bonds, of their respective counties in such amounts as may be necessary to defray in whole or in part, the expenses incurred or to be incurred in locating, constructing and establishing or repairing so much of any such ditch as may be located within said county; or in such relation to such county as to affect lands therein within the terms of this act. All such bonds shall be sold and negotiated as provided by section 1856 of the General Statutes of Minnesota 1913, and not otherwise. The word "expenses" shall be construed to mean and cover every item of cost of said ditch from its inception to its completion, and all fees and expenses to be incurred in pursuance thereof. Such bonds shall be payable at such time or times not to exceed twenty years from their date, and shall bear such rate of interest not to exceed six per cent per annum, payable annually or semi-annually, all as the county board shall by resolution determine. Each bond shall contain a recital that it is issued by authority of and in strict accordance with the provisions of this act, or such bond may be in such form as the state board of investment may prescribe, and shall be signed by the county auditor, who shall keep a record thereof. Said county board shall have power to sell and negotiate said bonds, as hereinbefore provided, but for not less than their par value. The proceeds from the sale of all such bonds shall be placed in a general ditch fund which is hereby created. The county auditor shall keep a separate account with each drainage ditch system, which account shall be credited with all moneys arising from the sale of bonds, all moneys received as interest or penalties or upon liens, charges, assessments and from all other sources on account of such drainage system, and which account shall be debited with every item of expenditure made on account of such drainage system. Such county board shall provide moneys for the payment of the principal and interest of said bonds as they severally mature, which moneys shall be placed in the general ditch fund, into which fund it may transfer any surplus moneys remaining in the general revenue fund or other funds of the county which can be properly used for the purpose of this act, into which fund shall be paid all moneys received from the payment of any liens created under the provisions of this act. And such board is hereby authorized to pay drainage bonds issued under the provisions of this chapter out of any available funds in the county treasury, when the moneys on hand in the general ditch fund of the treasury are insufficient to meet the payment of bonds issued in ditch proceedings when the same mature, but the fund from which such moneys have been taken or used for the payment of bonds as they mature shall be replenished with interest at the rate of six per cent per annum from collections of unpaid assessments, for ditches, drains or watercourses constructed under any proceedings had hereunder.

Except as herein otherwise stated, the provisions of this act shall not affect the rights or liability of any party to any existing contract or any surety on any existing bond, and existing statutes shall be deemed in force as to all such contracts and bonds. (Amended '15 c. 300 § 4; '17 c. 441 § 12)

123-59, 142-945.

Compensation of county treasurer for making collection of installments of assessments for county ditches (see 135-274, 160-766; note under § 5571).

[5542—]1. **Transfer of moneys from ditch to revenue fund legalized**—Where the board of county commissioners or other officers of any county in this state shall have heretofore, pursuant to orders or resolutions of such county board, borrowed and transferred or caused to be transferred from the general, or any special ditch fund of such county, to the general revenue fund of such county, any sum or sums of money, and at the time of the passage of this act, the same has not been repaid to the fund from which it was taken, and where at the time of the passage hereof, there is not money on hand in such general revenue fund from which it was taken, [and where at the time of

[the passage was taken] such transfer or transfers are hereby legalized and validated, and the total amount of such money so transferred from such ditch fund or funds and not re-paid, together with interest thereon from the date of such transfer, at six per cent per annum, is hereby declared to be the valid outstanding indebtedness of such county, and the same or any part thereof may be refunded as hereinafter provided. ('15 c. 301 § 1)

The phrase inclosed in brackets does not appear in enrolled bill in secretary of state's office, but appears in printed session laws.

[5542—]2. **Same—Bonds for repayment to ditch fund**—When the total amount of money so transferred from such ditch fund or funds and not repaid, shall have been ascertained, and a certificate showing such facts, signed by the county auditor and treasurer, shall have been filed in the office of the county auditor, the board of county commissioners of said county is hereby authorized to issue and negotiate the negotiable bonds of said county in such amount as they shall deem advisable, but not exceeding twenty-five thousand dollars (\$25,000.00), and not exceeding the amount of such sums so transferred from the ditch funds and unpaid as aforesaid, with interest thereon from the date of transfer to the time of issuance of the bonds at six per cent per annum, for the purpose of repaying into said ditch fund or funds the amount due thereto as aforesaid; and such bonds shall be a valid charge and obligation against the said county. The proceeds of the sale of such bonds shall be placed in the ditch fund or funds from which the money was originally borrowed or in the general ditch fund of the county if one be maintained; and shall be used to meet the obligation due from such fund or funds. ('15 c. 301 § 2)

[5542—]3. **Same—Terms of bonds—How issued, etc.—How signed**—Such bonds shall bear interest at a rate not to exceed six per cent per annum evidenced by interest coupons, and shall mature not later than twenty (20) years from date of issuance, the term thereof to be fixed by the county board and they may be made to become due serially. They shall be issued only when duly authorized by a resolution adopted by a majority vote of the board of county commissioners, and shall be sold at a time and place fixed by resolution of such board, notice of which sale shall be given as provided by law by at least two weeks publication thereof. Sealed bids may be received, but the county board may at the time set for such sale, reject any or all bids and then and there without further notice, receive and accept one or more oral bids. ('15 c. 301 § 3)

[5542—]4. **Same—Proceedings when instituted**—No county shall be entitled to avail itself of the provisions of this act unless it shall institute proceedings to do so, by the adoption by the county board of the resolution provided for in section 3 [5542—3], within sixty days after the passage of this act. ('15 c. 301 § 4)

5543. Statement and summary—

Compensation of county treasurer for making collection of installments of principal and interest on assessments for county ditches (see 135-274, 160+766; note under § 5571).

5544. Record of statement—Liens—Fees—

Compensation of county treasurer for making collection of assessments on county ditches (see 135-274, 160+766; note under § 5571).

[5546—]1. **Erroneous statement and summary—Corrected statement to be filed, etc.**—That in all cases in this state where a public drainage ditch has been regularly established by order of a county board or by order of the district court or a judge thereof pursuant to the provisions of Chapter 230 of the General Laws of Minnesota for 1905 and acts amendatory thereof or supplementary thereto, and where a county auditor or county auditors, as the case may be, has made a tabular statement and summary as required by Section 19 of Chapter 230 of the General Laws of Minnesota for 1905 [5543] and filed the same for record in the office of the register of deeds in and for the proper county, which said statement and summary is erroneous and which does not conform to the order of the county board or the order of the district court or

the judge thereof, as the case may be, the county auditor or county auditors, as the case may be, shall at the earliest practicable time after the discovery of said error make and prepare in tabular form a correct list and statement of the facts required by said Section 19 of Chapter 230 of the General Laws of Minnesota for 1905 [5543], the said corrected statement to be signed and executed by the county auditor or the county auditors, as the case may be, in the manner required by Section 20 of Chapter 230 of the General Laws of Minnesota for 1905 [5544], which said corrected statement and summary shall then be filed with and recorded by the register of deeds of the proper county. ('15 c. 178 § 1)

[5546—]2. Same—Corrected statement to take place of erroneous statement—That when said corrected statement and summary has been prepared and filed for record as hereinbefore provided, then and thereupon the said corrected statement and summary shall take the place of the said erroneous statement and summary and the amounts set forth therein shall be of the same force and effect as liens against the lands described therein as if the erroneous statement and summary had been correctly made and in conformity with the order of the county board or of the district court, as the case may be. ('15 c. 178 § 2)

[5546—]3. Same—Liens in erroneous statement discharged—Substituted liens—That in any case where it becomes necessary to make a corrected statement and summary as hereinbefore provided, the county auditor of any county affected is hereby authorized to release and discharge of record the liens set forth in the erroneous statement and summary in the manner following, to-wit: he shall issue under his hand and official seal a certificate stating that the original statement and summary has been found to be incorrect; that a true and correct statement and summary has been filed in his office and for record in the office of the register of deeds, and that the liens set forth in the corrected statement and summary are substitutes for and in lieu of the liens set forth in the erroneous statement and summary, and shall authorize the register of deeds in and for the proper county to release and discharge the liens set forth in said erroneous statement and summary, and shall direct said register of deeds to substitute in lieu thereof as liens against the lands described therein the amounts set forth in the corrected statement and summary; and when said certificate is recorded in the office of the register of deeds the liens evidenced by the erroneous statement and summary shall thereupon be released and discharged and the corrected statement and summary and the liens evidenced thereby shall take the place and be in lieu thereof, and the register of deeds in and for the proper county shall thereupon be authorized to release and discharge the original tabular statement and summary and the liens evidenced thereby of record. ('15 c. 178 § 3)

[5546—]4. Same—Amount of lien to be corrected in statement—That in any case where a corrected statement and summary is made and filed as hereinbefore provided after one or more installments of the liens set forth in the erroneous statement and summary have been collected by the treasurer of the proper county, or have been placed on the tax rolls for any year but not collected, then if the amount of the lien set forth in the corrected statement and summary against any particular description is less than the amount set forth in the erroneous statement and summary, the county auditor of the proper county shall make each of the installments unpaid proportionately lesser, so that the total amount collected as a lien against any particular description shall be equal to the amount set forth in the corrected tabular statement and summary with interest thereon; and if the amount of the lien set forth in the corrected statement and summary is more than the amount set forth in the erroneous statement and summary, the county auditor of the proper county shall make each of the installments unpaid proportionately larger so that the total amount collected as a lien against any particular description shall be equal to the amount set forth in the corrected tabular statement and summary with interest thereon. ('15 c. 178 § 4)

[5546—]5. **Same—Corrected statements and summaries legalized**—That in all cases where the county auditor or county auditors, as the case may be, have proceeded in the manner herein provided for correcting erroneous statements and summaries in county or judicial ditches, the same are hereby in all respects legalized and the erroneous statement and summary is hereby declared to be null and void and the corrected statement and summary is hereby given the same force and effect as if an erroneous statement and summary had never been made or filed. ('15 c. 178 § 5)

5548. Liens, how paid—Interest—Taxes, etc.—That payment of such liens shall be made to the treasurer of such county, as follows:

One-tenth of such principal on or before November 1st subsequent to the filing of lien in the office of the register of deeds and one-tenth on the first day of November of each year thereafter until the whole thereof is paid.

Provided, that if in the final order establishing said ditch or at any time thereafter the judge of the district court or the county board, in his or its discretion so orders, then payment of such lien shall be made to the said treasurer as follows:

One-fifteenth of said principal on or before five years from November 1st subsequent to date of said filing in the office of the register of deeds and one-fifteenth on the 1st day of November of each year thereafter until the whole amount of said principal is paid.

Except as provided in Section 5545 General Statutes 1913, the said principal lien shall bear interest at a rate not to exceed six per cent (6%) per annum payable annually on November 1st, reckoned from the date of the filing of the lien statement in the office of the register of deeds, and interest on the whole of the principal of such lien remaining from time to time unpaid shall be paid annually on November 1st, except as hereinafter in this section otherwise provided. In case bonds shall be issued by the county then the lien shall bear the same rate of interest as such bonds.

On or before the 15th day of November next following such filing the county auditor shall for the purpose of enforcing payment of such lien, enter on a ditch lien record of said county the whole amount of such lien remaining unpaid against each respective tract of land subject thereto, and shall at the same time or before tax lists for such year are turned over to the county treasurer, compute interest as in this law provided on such unpaid amount to the first day of June following, and shall enter such interest together with the installment, if any then due on the tax lists for such year and each thereof (installment and interest) shall be collected in the same manner as real estate taxes for that year on the tract in question are collected and the county auditor shall, in same manner, each year thereafter, compute interest on amount of such lien remaining unpaid and not previously entered on tax lists of prior year or years, together with interest to the 1st day of June, and enter the same on the tax lists with such portion of the principal of such lien as shall be due, said installment and interest to be collected in the same manner as the first payment, until the whole amount of any such lien and accumulated interest shall have been so entered on the tax lists of such county and all of the provisions of law now or hereafter existing in relation to the collection of real estate taxes so far as applicable hereto are hereby adopted for the purpose of enforcing payment of such liens and installments thereof and of the interest thereon and of each of the same, but no penalty shall be added to any such installment or interest thereon in case of default in the payment thereof.

When payment of the full amount of such liens, with accumulated interest, shall thus, or at any one time be made, the auditor, upon presentation of a receipt from the treasurer to that effect, shall issue under his hand and official seal a certificate of such payment, and the same when recorded in the office of the register of deeds, shall release and discharge said lien of record.

If any items of the cost of a ditch established under this or any prior drainage law by the terms of which the cost of construction is assessed against the benefited property or corporation, from its inception to its com-

pletion, has been or shall be omitted from the original tabular statement for assessment made and filed by the auditor, with the register of deeds, then a supplementary statement for assessment shall be made by said auditor in the same form and manner as the original statement, so far as practicable, showing such omitted costs, which supplementary statement for assessment shall be filed for record in the office of the register of deeds and shall be due, payable and collectable in the same manner, time and form as if a part of the last annual installment of the original assessment. (Amended '15 c. 300 § 5)

Compensation of county treasurer for making collection of installments of assessments for county ditches (see 135-274, 160+766; note under § 5571).

5551. Benefits to municipalities, railroads, etc., how assessed—Any township, village, city, county or other municipality receiving any benefits from the construction of drainage improvement under the provisions of this act shall be assessable therefor for any improvements to any public roads, street or other property owned or controlled by such municipality, and in the case of villages or cities they shall also be assessable for any benefits derived from the construction of such drainage improvement by way of furnishing an outlet for drainage of surface waters from within or in the vicinity of such city or village and for the removal of unhealthful conditions in the vicinity of such village or city by the drainage of stagnant waters from within or in the vicinity of such city or village, or for the furnishing of any other drainage or sewer outlet that may result in any benefit to or improvement of the healthful conditions of said city or village, and it shall be the duty of the viewers appointed under the provisions of this law to assess such benefits to such municipalities. Whenever any public road or street shall have been found to be so benefited the city, village, town or county which is by law chargeable with the duty of keeping such road or street in repair shall be assessed the amount of such benefits accruing to such road or street within the limits of such town, village, city or county, and all benefits that shall result to any such village or city in consequence of being furnished an outlet for drainage of any kind or improvement of the healthful conditions of said city or village as hereinbefore specified, shall be also assessed against such village or city, by reason of the construction of such improvement and the same, being fixed and determined by order of the board or court at any final hearing, or in case of appeal at any subsequent hearing before the court, the amount of the liability of such municipality for such assessed benefits shall be determined in the manner provided in section 5543 of the General Statutes of Minnesota of 1913 and the amount thus ascertained shall thereupon become a liability of such city, village, town or county, and shall be due and payable in ten annual installments beginning on the first day of June next following the date of the entry of the lien against private individuals as herein provided, and if such installments are not paid within thirty days after its maturity the amount thereof shall be extended by the county auditor against all the property in such city, village or town liable to taxation, and a levy thereof made thereon and the same shall become due, to be paid and collected in the same manner and at the same time as other taxes. In the event that for any reason an additional lien statement shall be filed in any drainage improvement the same method shall be pursued to ascertain the actual liability of each municipality or other party, and additional lien statement made and filed with reference to municipalities the same as in the case of lands or individuals. Provided: when any public road found to be benefited is a county or state road, as defined by the laws of this state, the benefits accruing thereto shall not be assessed against any city, village or town chargeable with the duty of keeping such roads in repair, but the same shall be assessed against the county and the amount thereof shall be charged to and paid out of the general road and bridge fund of said county. Whenever the lands of any railroad company shall be determined in any such proceeding to be benefited by any such improvement said lands shall be assessed their just proportion of the benefits as other lands are assessed, and such assessments shall be collected from the owners of such lands and in the same manner as in the case of other lands.

Whenever any railroad or the lands of any railroad company shall be determined in such proceedings to be benefited by any such ditch, such railroad, or the lands of such railroad company shall be assessed their just proportion of such benefits as other lands benefited are assessed, which assessment shall be collected from the owner of such railroad or from such railroad company in the same manner as personal taxes are collected by law. From the date of the filing by the county auditor or in the office of the register of deeds of the statement aforesaid, the amount of such assessment, with interest, shall constitute a lien against all property of such owners and railroad company within such county. Such lien may be foreclosed by action in the same manner as provided by law for the foreclosure of mortgage liens. (Amended '17 c. 441 § 13)

5552. Repairs—Assessments—Lands in other counties—State ditches, etc.—After the construction of any public drainage ditch within the State of Minnesota under any law of this state the county board of the county in which the said ditch or any part thereof is located shall keep the same or such part thereof in proper repair and free from obstruction so as to answer its purpose, and in case there is sufficient funds to the credit of the drainage ditch so to be repaired to make such repairs such fund may be expended by the county board for such purpose without further assessment; provided that no part of such original ditch fund shall be used for repairing or cleaning such ditch until such ditch has been completed according to the original plans and specifications therefor. In case there is not sufficient funds to the credit of such drainage ditch so to be repaired, except as hereinafter otherwise provided, the county board shall pay for the same out of the general revenue funds of the county, and to raise the necessary money to reimburse that fund it is hereby authorized to apportion and assess the cost thereof upon all lands originally assessed for benefits by reason of the construction of said ditch, said apportionment and assessment to be in the same proportion as was the original assessment for benefits.

Such county board shall make a written statement of such assessment and deliver the same to the auditor of the county who shall put the same upon the next succeeding tax duplicates of said county and who shall make and file in the office of the register of deeds, the lien statement covering the costs and expenses of such repairs in the manner so far as consistent, as provided by Sections 5543 and 5544, General Statutes, 1913, and such assessments shall be a first and paramount lien upon the lands affected, the same as state and county taxes.

In case such assessment or any part thereof is chargeable against lands in another county then the amount thereof chargeable against such other county shall by the county board of the county which has paid the same, be certified to the county auditor of such other county chargeable therewith and such last mentioned county auditor shall thereupon draw his warrant therefor in favor of and deliver the same to the county treasurer of the county which has paid the same, and such auditor drawing such warrant shall thereupon apportion and assess and file lien for the amount thereof upon all lands in his said county originally assessed for benefits by reason of the construction of said ditch in the same proportion as was the original assessment for benefits.

The provisions of this section shall apply to all works constructed for the purpose of drainage under any law now or heretofore in force in this state including state ditches. In case of repair of state ditches by the county board the cost of the same shall be paid out of the general revenue fund of the county, and to raise the necessary money to reimburse that fund the county board is hereby authorized and empowered and it shall be their duty to appoint viewers to assess and apportion the cost of such repairs and preliminary and other expenses in connection therewith, said assessment and apportionment to be for benefits to all lands which may have been benefited by the construction of said ditch and of any lateral or spur ditch emptying therein in proportion to such benefits.

All laws of this state in regard to county drainage ditches designating the number and qualification and duties and compensation of viewers, prescribing rules and directions governing the making of assessments of benefits and the manner and time of giving notice of meeting, governing and making, filing and the approval, change and adoption of the final report of the viewers, providing for a hearing thereon, and such other provision thereof as is necessary and is as adaptable therefor shall govern proceedings for repair of state ditches, and a statement of the assessment for repairs shall be made and such assessment levied and collected in like manner as hereinbefore in this section provided for the making of a statement of and collecting assessments for repairs of county or judicial ditches.

In case the total cost and expenses of repairing any ditch exceeds a sum equal to twenty-five (25%) per cent of the original cost of construction of such ditch, then the moneys to pay for such repairs may be obtained by the sale of the bonds of such county as provided by Section 5542 General Statutes 1913. The lien for the payment of assessments of benefits shall be payable in the same manner as is provided by law for the payment of assessments for the original construction of ditches and all provisions of law regarding the issuance of drainage bonds and the liens for benefits and the payment thereof and the filing of liens statement so far as applicable thereto shall apply to the repairs referred to in this paragraph.

Provided that if the repair of any county or judicial ditch is made necessary, or if it shall be necessary to widen, deepen or extend the same in consequence of the construction of lateral or private ditches or in consequence of the construction of other ditch or ditches which connect with or empty into said original ditch or into a lake or lakes which are drained, in whole or in part, by such original ditch, and which lateral, private or public ditch or ditches are constructed subsequent to and not included in the assessment for such original ditch, and which increases the volume of water to be taken care of by the original ditch or which deposit sediment in the original ditch and thereby contribute to the necessity for such repair, widening, deepening or extending, or in consequence of such ditch not being constructed in the first instance of sufficient capacity to furnish adequate drainage of the land affected, then the county board shall appoint an engineer who shall make such survey of said ditch and all branches and laterals discharging waters therein, whether a part of said original ditch proceeding or not, as he may deem necessary. He shall make an itemized tabular statement of the cost of repairing said ditch, and deepening, widening and extending the same to a new or different outlet where necessary, together with a description of the lands, roads, railroads and other property if any, that may be benefited or damaged by said deepening, widening and extending. He shall also in tabular form give the depth of cut, width at the bottom and width at the top, of all parts of said ditch that may be deepened or widened, and in case said ditch is extended to a new or different outlet, shall include in relation thereto as far as practicable all requirements of the engineer's report designated in Section 5536 of this law.

He shall make a complete report of his doings and submit therewith the necessary plans and specifications and a description of the lands over which said ditch if extended to a new and different outlet is surveyed.

Such report shall give the names of assistants and laborers and the time each was employed by or under him, together with his own time on the work and every other item of expense by him incurred in and about the work, and he shall forthwith file the same with the auditor of the county wherein he was appointed.

If the county board find from such report that such ditch is in need of such repair, widening, deepening or extending, said board shall at their first or any subsequent meeting thereafter, appoint three viewers whose qualifications shall be as herein provided, and thereupon proceedings shall be as near as practicable in conformity with the provisions of law relating to original ditch proceedings, except that the cost of such repairs, widening, deepening

and extending, including all damages awarded and paid by reason thereof, shall be equitably apportioned between the lands benefited respectively by such original ditch and those benefited by such private, lateral, or other ditches constructed as aforesaid, in proportion to the benefits to such respective ditch systems resulting from the construction of such original ditch and of such lateral, private and subsequent ditch or ditches, the same as if such original ditch and such lateral, private and subsequent ditch or ditches were originally one ditch system, and such viewers shall then equitably apportion and assess the portion of the cost of such repairs and expenses so determined to be borne by such private, lateral or other ditches upon the lands benefited by the construction of such lateral, private or subsequent ditch or ditches, or by branches, thereto, in proportion to the benefits to such lands resulting from such construction, and shall likewise apportion and assess the portion of such cost determined to be borne by such original ditch upon the lands benefited by the establishment and construction thereof in proportion to such benefits. The fact that such portion of such cost of repair, widening, deepening or extending, and such expenses respectively apportioned to such lateral and subsequent ditch system or systems, and to such original ditch system is respectively apportioned and assessed against the respective lands benefited thereby, in the same proportion as the respective original assessment of benefits therein shall in all cases be prima facie evidence that such assessment and apportionment is made in compliance with the provisions and requirements of law.

Such viewers shall perform like duties and be governed by the same rules and restrictions in acting hereunder as is provided by law for viewers in judicial ditch proceedings, and such viewers shall within sixty days after their appointment file their report in writing with the county auditor of the county and such county auditor shall give notice of the hearing on such report as is provided by law for hearing on engineer's and viewers' report in judicial ditch proceedings. At such hearing the county board shall proceed to consider such viewers' report and adopt or modify the same and the power and authority of such county board in relation thereto shall be the same as is possessed by the judge at a final hearing on the engineer's and viewers' report in judicial ditch proceedings under the laws of this state. The same right of appeal from or review of the assessment of benefits and damages and the same procedure in relation thereto shall exist in regard to orders herein as exist by law in the case of county ditch proceedings.

After final action by the county board in relation to such assessment, the county auditor shall proceed as is in this section provided in case such assessment for repairs were made by the county board. The repairs herein provided for shall be construed to include the taking from said ditch of sediment deposited therein, the removal of obstructions therein, the widening and deepening thereof so as to answer its original purpose or so as to provide for additional flow of waters caused by other ditches or any other reason, the cutting and removal of weeds or grass from the bottom, sides, banks, or right of way of such ditch and such other changes or alteration therein as will enhance its usefulness for the purpose of drainage, and shall further be construed to include the extension of said ditch to a new outlet when and in case the same is found by the county board to be necessary or advisable. (Amended '15 c. 300 § 6)

5552-A. County ditch inspector—Duties and salary—Duty of county board—That in all counties where drainage ditches costing in the aggregate not less than \$50,000.00, have been or hereafter shall be constructed under the provisions of the laws of the state of Minnesota, by the district court or county board, there shall be appointed by the county board, a competent man who shall be known as county ditch inspector, whose duty it shall be to travel over the line of all of such county and judicial ditches in said county at least twice in each season and inspect the same, observe their operations and what repairs thereto or improvements may be necessary or proper, and immediately after such inspection he shall make a full report in writing to the county board of his work, together with his estimate of the cost thereof.

He shall also include in such report an itemized statement of the time spent upon each ditch and of his expenses incurred in connection therewith.

Whenever it shall appear by the report and recommendations of such inspector that it is necessary and proper for any drainage ditch in such county to be repaired or improved, the county board shall take such steps as it may deem advisable to determine the necessity for such repairs and improvements and if in its judgment any repairs and improvements are necessary then it shall make an order specifying the same and it shall require said work to be done under the provisions of section 5552 of the General Statutes of Minnesota for the year 1913 as amended by chapter 300 of the General Laws of Minnesota for the year 1915 and all the provisions of said last named section shall apply to the making of such repairs and improvements so far as applicable.

The salary of such county ditch inspector shall be fixed by the county board and shall be paid out of the general revenue funds of the county which shall be reimbursed as provided for in said section 5552 by assessment upon all lands originally assessed for benefits by reason of the construction of the ditches inspected by him. ('17 c. 441 § 14)

1917 c. 441 § 14 amends this chapter by adding a section to be known as § 5552-A.

5552-B. Tile drainage system—Petition—Powers of county board—Bond
—Whenever one or more parties owning land adjoining or in the vicinity of any outlet or any public ditch or drain, adjoining or in the vicinity of any body of water forming a part of or connected with any such ditch or drain, and having right of way connecting his or their land therewith, shall petition the county board of the county wherein said land is located for the establishment of a tile drainage system draining his or their land and connecting the same with said ditch or drain or body of water, and fully describing said proposed system in general terms, and said petitioners shall in their said petition fully authorize and empower said county board to do and perform all things necessary to establish and construct such tile drainage system and to exercise in so doing all the authority by this act or any other law of this state granted to the board of county commissioners in the establishment of county ditches or county drainage improvements without the giving or service of any notice in connection therewith, and expressly waiving all such notice, and shall in and by said petition fully authorize said county board to order established and constructed said tile drainage system as finally determined upon by them, and to levy and assess the cost thereof against the property drained and benefited, and shall file said petition in the office of the county auditor of such county, then and in that event the county board shall have jurisdiction of all persons and property named, described and referred to in said petition, and are hereby authorized to cause to be surveyed said drainage system as petitioned for, or as may be established, by them, and upon the coming in of the engineer's reports may order said system established and cause the same to be constructed, and shall have and may exercise together with the county auditor all power and authority by this act granted to county board and county auditors in the establishment and construction of county ditches or county drainage improvements, including the letting of contracts, the filing of summary statements and lien statements, the establishment of liens and the time and manner of payment and the issuance and sale of bonds, and all other acts and things by this act authorized, so far as the same may be necessary, as fully and with the same effect as in the case of regular proceedings to establish a drainage improvement under the provisions of this act. Provided: no county board shall incur any expense under the provisions of this section until a proper bond is furnished by said petitioners, in at least the sum of \$1,000.00 with sufficient sureties to be approved by the county auditor and payable to the said county, conditioned to hold the county harmless from any cost in connection with said proceedings, and all costs and expense incurred in connection therewith shall be added to and treated as a part of the costs of said proceedings, and assessed against the property benefited, and if the parties themselves have agreed upon a plan of division of the costs such plan may be adopted, otherwise viewers may be appointed

with like authority and effect as in the case of ordinary county drainage proceedings. Provided, further: that in the event that the land or some part thereof has not been assessed for the construction of said main ditch or drain then such system shall be connected with said ditch or drain only upon condition that all lands not assessed shall be assessed as provided by this act in the case of connecting laterals, and said lateral or tile system when connected shall be and form a part of said ditch for all future purposes. ('17 c. 441 § 15)

1917 c. 441 § 15 amends this chapter by adding a section to be known as § 5552-B.

5553. Judicial ditch—Petition—Bond—

The act of 1909 confers jurisdiction on the district court or judge thereof, though the proposed ditch is wholly within one county and does not benefit or damage land in another county (131-43, 154+617). Drains, ¶28.

The act of 1909 is not unconstitutional as conferring nonjudicial powers (131-43, 154+617). Constitutional Law, ¶70(1), 74.

5554. Hearing in district court—

134-435, 159+965.

5555. Appointment of engineer—Survey—Report—

Engineer's report held not subject to the objection that it was void for uncertainty in locating the proposed ditch (131-43, 154+617).

5557. Filing of report—Notice of hearing—

134-435, 159+965.

5558. Hearing—Proceedings—

The order establishing the ditch need not use the word "establish," if the intent is otherwise manifest (159+758).

5562. Abandoned or dismissed proceedings—Use of former survey—Re-fundment under bond—

After the county board has ordered the establishment and construction of a state rural highway, it has no power to abandon the enterprise, and the auditor has no discretion to decline to receive bids on the ground that the project has been abandoned (132-96, 155+1048). Highways, ¶79(1), 118(1).

5565. Damages arising after construction—Petition—Viewers—Notice—Hearing—

Damages awarded held not excessive (see 135-198, 160+493). Eminent Domain, ¶150.

5567. Appeals—Bond—

The practicability of a drainage plan is for the determination of the trial court, there being nothing in the evidence returned to the supreme court justifying interference by that court (131-43, 154+617). Drains, ¶7.

Where the record does not affirmatively show that the notice of appeal and the bond were not filed within 30 days after the filing of the award, an objection that the appeal was not perfected in time cannot be sustained (135-198, 160+493). Drains, ¶57.

5571. Compensation of engineers and other officers—Referee—Appeal, etc.—The following fees and expenses shall be allowed and paid for services rendered under this act. To engineers a sum not exceeding the sum of \$10.00 per day, to be fixed by the judge or the county board making the appointment, for every day necessarily engaged and actual and necessary expenses including cost of bond. To each viewer the sum of \$4.00 per day for every day necessarily engaged in viewing ditches and traveling therefor and making up the reports and actual and necessary expenses. To each rodman a sum not exceeding \$3.00 per day and actual and necessary expenses. To each chainman, axeman and other like employees not herein mentioned and necessary to the prompt execution of the work of locating or constructing a public ditch, a sum not exceeding \$2.50 and actual and necessary expenses. To each member of the county board the sum of \$5.00 per day for each day actually occupied in proceedings to establish or repair or inspect any ditch after its completion or during the course of the work if appointed as a committee for that purpose and the sum of 10 cents per mile each way for travel necessary in attending any special meeting of the county board called for the purpose of transacting any business pertaining to such ditch and for travel in inspecting ditches or any other necessary travel in said ditch matter. To the county auditor, county attorney, attorney for petitioners, clerk of the district court,

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the register of deeds, the sheriff and other officials performing duties thereunder, such reasonable compensation as shall be fixed by the county board or court as the case may be, and the fees and compensation of all such county officials and other officers in ditch proceedings shall be in addition to all sums and fees allowed them by law, provided that the fees of such auditor shall in no case be less than \$20.00 nor more than \$250.00. In all proceedings where any county is directly interested the county attorney thereof shall represent the county unless otherwise provided by the county board. No county attorney or his assistants or any attorney associated with him in business shall otherwise appear in any drainage proceeding for any person or party whatsoever interested therein. All fees, per diem, compensation and expenses provided for in this act and fees for such other legal service, and expenses as may be necessary shall be allowed and paid upon the order of the county board or the judge of the district court, as the case may be.

The said judge or county board, as the case may be, may appoint a referee in any ditch proceedings to perform the duties hereinafter set forth and such referee shall qualify by taking the appropriate oath and giving bond to the county or counties affected by such ditch in such sum as shall be fixed by such judge or board, as the case may be. Said bond shall be conditioned for the faithful performance of his duties as such referee. Said referee shall be a qualified civil engineer. The fees of such referee shall be fixed by said judge or board, as the case may be, and shall be paid out of funds of such ditch as shall be ordered by said judge or board. It shall be the duty of such referee, if appointed, to consider all bills of account or applications for payment in such ditch proceedings and to hear evidence if offered in relation thereto and to report in writing to such judge or county board his approval, rejection or amendment thereof as such referee who shall also keep accurate record and account of all bills of account and all applications for payment acted upon by him and reported to said judge or county board together with copies of all such reports and all proceedings had in relation thereto. It shall further be the duty of said referee by order of said judge or board to inspect and examine and make report upon all work of construction in the matter of such ditch prior to final acceptance thereof and for the purpose of making such examination or inspection and upon application of such referee the said judge or board may appoint and designate a competent and experienced civil engineer, other than the one officially acting as such in such ditch proceedings, to examine such ditch and the plans and specifications thereof and report thereon to said referee and it shall be the duty of such referee and if requested by such referee of said engineer to appear and testify before the judge or county board considering the final acceptance of such ditch. When order of said judge or county board approving a report of such referee and allowing a bill of account or application for payment in such ditch proceedings shall constitute and be construed as an accounting and allowing of such account by such judge or county board within the meaning of this section and the approval by said judge or county board of any order of said referee shall constitute the said report of said referee, the order of said judge or county board (in such proceeding, provided in all cases and said judge or county board) may reject such report and make an independent order in relation thereto covered by or contained in such report. Such referee shall be subject to removal at the pleasure of said judge or county board.

Any land owner, employé or other person aggrieved by any order of court or county board relative to the allowance of fees or fees and expenses may appeal from such order to the district court of any county in which the proceeding is pending and by notice given on or before the first day of the term, demand and obtain a jury trial. All such appeals shall be taken within thirty (30) days after the order allowing such claim and shall be governed as far as applicable by the provisions of section 5534 of the General Statutes of Minnesota for 1913, save that in all appeals taken by parties whose lands are assessed for said improvements, then the expenses thereof shall be paid by the county and assessed against said improvement. (Amended '17 c. 441 § 16)

A county attorney, who performs services for the county in proceedings to establish a county ditch, is not entitled, under this section, to compensation therefor, unless his services are

required or requested by the county board, or the services were rendered in protection of some special interest of the county which it is his general duty as county attorney to protect. The county has no such special interest in the question of damages and benefits to be paid by and to the owners of affected property, and no such interest to protect on an appeal to the district court from an award thereof (161+382). District and Prosecuting Attorneys, ¶5(1).

The county treasurer is not entitled to compensation in addition to his salary for making collection of installments of principal and interest on assessments for the construction of county ditches, by virtue of the provision for compensation to "other officers * * * performing duties hereunder" (135-274, 160+766). Counties, ¶74(3).

In action on bond given under this section it was held that it is not necessary that the county auditor's compensation be fixed before the auditor does his work, or at any particular time. The bill of the auditor for compensation having been presented to the county board and having been approved, such action amounts to a fixing of the compensation (123-437, 143+970). Drains, ¶29.

5576. Stranger to proceedings cannot question same—Liens, assessments and contracts not invalidated, when—

A landowner, who suffers no damage by the proposed connection of a village drainage system with a judicial ditch, and whose assessment is not affected thereby cannot maintain certiorari to review the judgment authorizing the connection, the village not complaining (159+758). Drains, ¶82(4).

5577. Appeal to supreme court—

Form and requisites of writ of certiorari from supreme court to review ditch proceedings (see 161+714). Certiorari, ¶45; Drains, ¶37. See, also, notes under §§ 8313, 8314.

5589. Order draining meandered lake—Appeal—

The question of the propriety of diverting the waters of a meandered lake may be determined upon appeal to the district court, but the propriety of the order in any other respect cannot be considered by the court; hence upon reversal of the order of the county board, because it provided for the draining of a meandered lake not properly subject to drainage, it may proceed with the drainage project under § 5531, except in so far as it affects the meandered lake (128-69, 150+209). Drains, ¶36(2).

[5590—]1. **Omissions—Additional supplementary statement for assessment—**Wherever any items of cost of a ditch established under the provisions of Chapter 230 of the General Laws of 1905, and acts amendatory thereof and supplemental thereto, from its inception to its completion, have heretofore been omitted from the original tabular statement for assessment made and filed by the auditor with the register of deeds and the supplementary statement for assessment made and filed by said auditor under the provisions of Section 5590, General Statutes 1913, and such omitted items have been paid by the county by warrant on the ditch fund thereof, then and in that case an additional supplementary statement for assessment shall be made by said auditor in the same form and manner as the original statement, so far as practicable, showing such omitted items and interest accrued on the warrants issued in payment thereof, which additional supplementary statement for assessment shall be filed for record with the register of deeds in the proper county, and in the discretion of such county auditor, may be made due, payable and collectible either in the same manner, time and form as if a part of the last annual installment of the original assessment, or in installments, the number thereof to be equal to the number of installments remaining unpaid on such original statement for assessment at the time such additional supplementary statement shall be filed; and in either event such additional supplementary statement shall be and operate as a lien on the land affected as fully as though part of such original assessment. ('17 c. 369 § 1)

[5590—]2. **Same—Duty of auditor—**Upon the filing by the auditor of such additional supplementary statement for assessment with the register of deeds, said auditor shall notify each person by mail whose lands are affected thereby of the filing of such statement and the individual assessment due thereon. Such notice shall be sent to the last known address of such persons. ('17 c. 369 § 2)

[5590—]3. **Same—Pending actions—**This act shall not apply to or affect any action or appeals now pending. ('17 c. 369 § 3)

5591. Reassessment of benefits and damages in certain cases—

Cited (162+686).

5593. Appeal to supreme court—

Form and requisites of writ of certiorari from supreme court to review ditch proceedings (see 161+714). Certiorari, §45; Drains, §37.

5601. Change of method of construction—Enlarging, deepening or changing location, etc.—Whenever proceedings have been or hereafter shall be taken to lay out a drainage ditch according to law and the same has been or hereafter shall be laid out and established, and the contract for the construction thereof let, and it has been or thereafter shall be found to be impossible, by reason of unfavorable weather or other good cause, for the contractor to construct the same, and the engineer in charge of such ditch concludes after examination, that better results can be obtained by a different method of construction, thereupon, upon a petition of not less than seventy-five per centum of the owners of the land affected by the construction of such drainage ditch, as shown by the viewers' report in such proceedings, and upon the filing with the county auditor of the county where such proceedings are pending in case of a county ditch, or with the clerk of the district court where such proceedings are pending in case of a judicial ditch, by said contractor and his bondsmen of an agreement in writing consenting thereto, the said county auditor or county clerk or county auditors, as the case may be, may alter or modify the contract theretofore entered into with such contractor as to the manner, method or time within which such drainage ditch shall be constructed, in accordance with the recommendation of the engineer in charge thereof, upon the filing of such recommendation with such auditor, or auditors, or clerks as the case may be.

Provided further, that if, after the establishment of any county or judicial ditch, and before the completion thereof, it shall become apparent that said ditch or any of the branches thereof should be enlarged, deepened or otherwise changed or that a change or alteration in the location should be made for the better service thereof, the county board in case of a county ditch or the court in case of a judicial ditch may authorize such change or changes as the engineer shall recommend. Provided, however, that before any action shall be taken by the court or the county board, as the case may be, a petition signed by twenty-five per cent of the resident owners of lands affected by said ditch as named in the order establishing said ditch not exceeding in any case more than fifty such resident owners shall be filed with the county auditor if a county ditch, or with the clerk of court if a judicial ditch, setting forth the necessity for the changes or alterations in said ditch, and at the time of filing such petition one or more of such petitioners shall give a bond with good and sufficient freehold sureties payable to the county to be approved, including amount and sureties, by the court or the county auditor, as the case may be, conditioned to pay all expenses in case the county board or the court shall fail to make the alteration or change prayed for in said petition. The same notice shall be given as is given on the filing of an original petition for a new ditch. If upon the hearing of said petition the county board or the court, as the case may be, from the evidence considers it necessary or advisable that changes or alterations be made in said ditch, either in size, location or otherwise, the county board or the court, as the case may be, shall have authority to resubmit the same to the engineer who had charge of said ditch or appoint a new engineer to re-examine said ditch and make report as to changes or alterations he may deem necessary for the betterment of said ditch. Said engineer shall within thirty (30) days make report thereon as to the changes and alterations thereon for the improvement of said ditch. If changes and alterations are recommended by the engineer in said ditch, the viewers shall re-examine said ditch with the proposed changes and alterations and shall within twenty (20) days, after the filing of said engineer's report, file with the auditor or with the clerk of said court, as the case may be, their amended viewers' report.

Upon the filing of the amended viewers' report with the county auditor in the case of a county ditch or with the clerk of the district court in the case of a judicial ditch, the county auditor or clerk of court, as the case may be, shall give the same form of notice as was given on the filing of the original view-

ers' report, and thereupon procedure identical with the proceedings of sections 5531, 5532, 5557 and 5558, General Statutes of Minnesota, for year 1913, and amendments thereto, as the case may be, shall be had and followed, and the court or the county board, as the case may be, shall have the same powers as provided by law as upon the hearing of the original viewers' report thereon. (Amended '17 c. 350 § 1)

5605. Consolidation of proceedings—Petition and bond—Order and service—In any case where one or more ditches or drainage improvements whether open or tiled, whether public or private, shall have been or are being constructed or may hereafter be constructed, or for the construction of which proceedings have already been, or may hereafter be, initiated, the waters from which do or may empty into any creek, draw, water course or body of water, whether meandered or not, and the construction of said ditch or drainage improvement shall cause or is likely to cause by reason of the added waters, the overflow of the waters of said creek, draw, water course or body of water, and the inundation of the adjoining land, then, and in that event, upon the filing of a petition by the county board of any county affected, or by not less than four freeholders whose property is affected by such overflow, with the clerk of the district court of any county affected by such proposed improvement, setting forth in general terms the existence of said ditch or ditches and the conditions of said creek, draw or water course or body of water and outlet, and the necessity for the improvement of said outlet, and if need be, the controlling of said waters therein or in said body of water, or both, and that said proposed improvement will be a public benefit and utility and improve the public health and protect said land from overflow, and asking for the consolidation of all said ditches or ditch proceedings, whether public or private, connected with or emptying its waters into said outlet or into said body of water into one system, and the extension of the same so as to furnish a proper outlet for all waters of said basin that naturally drain into or through said outlet, and that the cost of constructing such outlet shall be borne by all of the lands to be benefited, and that in order to equitably apportion the cost of the construction of said improvement on the extension of said outlet to all the lands to be benefited, it is necessary that such proceedings be merged and consolidated, and said petition shall be accompanied by a proper bond as provided in section 4 of this law [5525]; thereupon the clerk of said court shall notify the judge thereof and said judge shall make an order fixing the time and place for hearing upon said petition and ordering all proceedings then pending in any or all of said ditch proceedings to be stayed until the hearing and determination of said petition, which petition and order shall be served upon all persons and parties interested in such ditch proceedings by publication thereof once a week for three successive weeks prior to the date of such hearing, in a legal newspaper in each county in which such proposed ditch or ditches or any part thereof are situate, and if any such proposed ditches are pending before the county board of any county, such petition and order shall be served upon the county auditor and clerk of the district court of such county. (Amended '17 c. 441 § 17)

5614. Same—Services and compensation of officers—

A county attorney, who performs services for the county in proceedings to establish a county ditch, is not entitled, under this section, to compensation therefor, unless his services are required or requested by the county board, or the services were rendered in protection of some special interest of the county which it is his general duty as county attorney to protect. The county has no such special interest in the question of damages and benefits to be paid by and to the owners of affected property, and no such interest to protect on an appeal to the district court from an award thereof (161+382). District and Prosecuting Attorneys, ~~§~~5(1).

TOWN DITCHES

5634. Words defined—Clerk, etc.—The following words used in this act shall have the meaning herein given unless another intention clearly appears: The word "ditch" as used in this act shall be held to include any open, covered or tiled ditch or drain or any ditch or drain in part open and in part tiled or covered, and any drain, water course or creek and any side, lateral, spur

or branch ditches and each and all of the constructions referred to in this act. The word "board" as herein used means the board of supervisors of the town in which the lands or roads described in the petition are located or, if said lands or roads are located in more than one town, then the word "board" means all of the supervisors of each one of the towns in which any of said lands or roads are located, acting together as one body at a legally called meeting. The town clerk of the town in which the petition was filed shall act as the clerk of said board and keep a detailed record of its doings. Two or more of said supervisors shall constitute a quorum of said board and a majority of the supervisors present shall have power to act. The words "town clerk" and "town treasurer" as herein used shall always be held to refer to the town clerk and town treasurer of the town in which the petition was filed. The word "engineer" as used in this act shall be held to include any competent surveyor. (Amended '17 c. 293 § 1)

Cited (125-403, 147+273).

If the statutory prerequisites have been complied with, the contract price for constructing the ditch may be recovered from the petitioners. The town officers, in performing the duties imposed on them by the statute, act as agents of the law, and not as representatives of the town (124-78, 144+458). Drains, ~~§~~18.

Whether the purpose for which private property is to be taken is a public purpose is subject to review by the courts (125-403, 147+273). Eminent Domain, ~~§~~66.

5635. Petition to town board—Certain meandered lakes—

See note under § 5636.

124-78, 144+458, and notes under §§ 5634, 5643, 5655.

Private property cannot be taken for ditch purposes, unless the ditch will serve some public purpose (125-403, 147+273). Eminent Domain, ~~§~~31.

5636. Petition to town board—Certain meandered lakes—Before any ditch shall be established under this act there shall be filed with the town clerk of any town in which any part of said ditch is proposed to be located, a petition therefor signed by one or more corporations owning lands which will probably be benefited by the construction of said ditch or by the chief executive officer of any city or village whose streets will probably be benefited by the construction of said ditch or by the town board of supervisors of any town whose highways will probably be benefited by the construction of said ditch, setting forth the necessity thereof, and that it will be of public benefit or promote the public health, with description of the proposed starting points, routes and termini and of the general character, size and depth of said ditch. Said petition shall also contain a legal description of all lands through which said proposed ditch shall run, or to be drained, as near as can be ascertained and shall also contain a description of all public roads and streets likely to be benefited thereby, as nearly as can be ascertained. In such petition the petitioners may, at their option, ask the appointment of an engineer to perform the duties hereinafter in this act specified, and may also at their option ask the appointment of an attorney at law to perform the duties hereinafter in this act specified. Also they may ask for the appointment of three resident freeholders of the town not interested in the construction of the proposed work, and not of kin to any of the parties known to be interested therein, as viewers to meet at a time and place fixed by the board. Such petition may include any side, lateral, spur or branch ditches necessary to secure the object of the improvement and may ask for the different parts of the ditch to flow in different directions with more than one outlet. Provided, that no meandered lake adjoining an incorporated village, or within four miles of any city of the fourth class, or upon which any incorporated village is a riparian owner, shall be drained or lowered under the provisions of this act unless by the approval of a majority vote of the legal voters of such village or city at any annual or special election held for that purpose. Such special election, if any, held for such purpose shall be called in the way and manner provided by law for calling special elections. (Amended '17 c. 380 § 1)

1917 c. 380 ("An act to amend sections 5636, 5639, 5641, 5642 and 5667," etc.) § 1 amends "section 5636," so as to read as above set forth. See § 5635.

5637. Notice of hearing—

124-78, 144+458, and notes under §§ 5634, 5643, 5655.

5638. Hearing—

124-78, 144+458, and notes under §§ 5634, 5643, 5655.

5639. Engineer—Bond and oath—Survey—Report—Duties of clerk and committee, etc.—If the petition asks for the appointment of an engineer in said matter, said board shall, at said hearing, and before taking final action on said petition, appoint a competent engineer to make plans and specifications for said ditch and to superintend the construction thereof when established. Said engineer before entering upon his duties shall give a bond in the sum fixed by the board, payable to the towns in which any part of the ditch is proposed to be constructed for the use of such towns and also for the use of all persons aggrieved or injured by the negligence or malfeasance of said engineer, to be approved by said town clerk conditioned that he will diligently and honestly and to the best of his skill and ability perform his duties as such engineer, but said engineer shall not be required to continue his bond after the conclusion or abandonment of the work. He shall take an oath to faithfully perform his duties. Said engineer shall forthwith make a survey for said ditch and prepare detailed plans and specifications for the construction thereof and make prompt report in writing of his doings to said board. Upon the appointment of such engineer said board shall adjourn said hearing a sufficient time to enable the said engineer to make and file his report in the office of said town clerk, upon the filing of the engineer's report in the office of the town clerk the board shall immediately fix a time and place in which the viewers, if any one appointed, are to meet for the purpose of viewing the proposed ditch, if no viewers have been appointed then the committee appointed by the board shall immediately proceed with or without the engineer to proceed to assess benefits and damage by the reason of the construction of the proposed ditch in accordance with the rules as mentioned in section 5642 of this act and file their report in the town clerk's office and the town clerk shall forthwith fix a time and place for a hearing on said report and shall again give notice to all parties interested and to all land owners whose lands are liable to be benefited or damaged by the reasons of the construction of the proposed ditch. Said notice shall conform to all requirements as the notice required on the petition as set forth in section 5637 of this act. (Amended '17 c. 380 § 2)

5641. Hearing—Order establishing ditch—Roads benefited or injured, etc.—All persons interested may appear and be heard by and before said board. If such board from such evidence as may be adduced before them shall find that all of the proceedings in the matter have been in accordance with the provisions of this act and that the estimated benefits of said work are greater than the total cost, including damages awarded and that said work will be of public utility or promote the public health, they shall establish said ditch by an order to be signed by them and shall include in said order, either expressly or by reference to maps, plats, specifications or papers on file in the office of said town clerk in said matter, an accurate description of said ditch and of the starting points, routes and termini, size and depth of said ditch and whether open, tiles or covered. They shall also fix a time for the completion of said ditch. Said board shall also include in their final order establishing said ditch a tabular statement showing the names of the owners of, the legal descriptions of and the number of acres in each tract of land to be benefited or damaged, the said names to be the same as appear on the tax duplicates of said county, the estimated number of acres in each of said tracts to be benefited or damaged, the number of acres added to any tract by the change of any water course and the location and value of said added land, the damage, if any, to riparian rights pertaining to any tract, the amount that such tract will be benefited or damaged by the construction of said work. When any ditch established under this act benefits either in whole or in part any public road or street within the limits of any town, village or city, charged with the repair thereof, said board shall estimate and report separately in such tabular statement the benefits to each public road or street together with the names of the town, village or city charged with the repair thereof. They shall also report in such tabular statement the damages awarded for injury to any road or roadbed and after the construction and maintenance of any bridges, cul-

verts or other work necessary to the establishment of such ditch they shall make an order setting forth that fact and their reasons therefor. (Amended '17 c. 380 § 3)

124-78, 144+458, and notes under §§ 5634, 5643, 5655.

5643. Costs and expenses—

This act requires the petitioners to bear the entire expense of the ditch, and does not impose any liability on the town (124-78, 144+458). Drains, ~~60~~.

5644. Securities required—

124-78, 144+458, and notes under §§ 5634, 5643, 5655.

5646. Appeal to district court—Jury—

A landowner may review proceedings for the establishment of a town ditch by writ of certiorari, but he cannot maintain an action to restrain the construction of the ditch (125-403, 147+273). Injunction, ~~7~~.

5650. Job, how sold—Contract—Bond—

124-78, 144+458, and notes under §§ 5634, 5643, 5655.

5651. Bond and contract—

Cited (162+1054).

5653. Failure of contractors—

124-78, 144+458.

5654. Damages, how paid—

124-78, 144+458, and notes under §§ 5634, 5643, 5655.

5655. Supervision—Certificate of completion—

A complaint for the contract price of a ditch, which does not allege that the certificate of the inspector has been made, or that the inspector should have made the same, and improperly refused, does not state a cause of action (124-78, 144+458). Drains, ~~49~~.

5656. Statement and summary—

124-78, 144+458, and notes under §§ 5634, 5643, 5655.

5657. Statement, how executed—Record—Liens—

124-78, 144+458, and notes under §§ 5634, 5643, 5655.

5658. Collection of assessments—Interest—Discharge of lien—

124-78, 144+458, and notes under §§ 5634, 5643, 5655.

5660. Assessments, how disposed of—

124-78, 144+458, and notes under §§ 5634, 5643, 5655.

5667. Compensation of engineer, members of board, etc.—The engineer, if appointed, shall receive the sum of \$5.00 per day for every day he is necessarily engaged in performing the duties required of him by this act and his actual and necessary expenses incurred in and about the same. The members of the board shall each receive \$3.00 per day for every day they are necessarily employed in acting on said ditch proceeding or in viewing said ditch and making up and filing their orders and their actual and necessary expenses. The viewers shall receive the same compensation as the town board do for their work. Each rodman shall receive the sum of \$2.00 per day and may be allowed in addition thereto his board and lodging for each and every day he is employed and each chainman, axman and other employee necessary to the prompt execution of the work of locating or inspecting said ditch shall be allowed \$1.50 per day and may be allowed in addition thereto his board and lodging for the time such person is thus actively employed. The town clerk, the town treasurer, the register of deeds, constable and other officers shall be paid the same fees as are allowed by law for similar service or if no fees are allowed then they shall receive reasonable compensation for their services. Such compensation shall be in addition to all sums allowed by law at the time of the passage of this act. The attorney at law shall receive reasonable compensation for his services. The fees per diem, compensation and expenses shall be before payment, audited and allowed by the town clerk and shall be paid by the petitioners from time to time. (Amended '17 c. 380 § 4)

[DRAINAGE IN CONNECTION WITH STATE BOUNDARY WATERS]**[5671—]1. Drainage and flood control districts—Power of district court—**

Purposes—Whenever it shall become necessary or expedient in order to facilitate or control drainage into or from any lake, pond or other body of water or any river, stream or water course, which forms to any extent the boundary line between this state and any other state or when it shall become necessary in order to control, to any extent, floodwaters into, through or from any such lake, body of water, stream or water course to raise, lower or otherwise affect the stage or depth of water therein or in any stream, river or water course flowing into this state therefrom or from any drainage basin in another state which drainage or flood control shall cause benefit or damage to or otherwise affect property in this state and to some extent in such other state, the district court of any county in this state or any judge thereof in vacation is hereby vested with jurisdiction, power and authority upon the filing of a petition as specified in section 2, of this act [5671—2] and the conditions stated are found to exist, to establish a drainage and flood control district and define and fix the boundaries thereof which districts shall include territory abutting upon such boundary waters or affected by waters flowing into or from such boundary waters and may include territory within or partly within and partly without any county and may include the whole or any part of one or more counties including the county in which said petition is filed but shall include territory forming the whole of a natural river or drainage basin and within which the waters directly or through tributaries find their way into and through one common outlet, and said court is hereby vested with jurisdiction, power and authority under the conditions provided in this act, to make all necessary orders providing for the construction of any and all improvements specified in this act, as may be found necessary for any of the following purposes within any such district so organized, or affecting such boundary waters or any river, stream or water course flowing into or from the same within the limits of this state including rivers or bodies of waters affected by the overflow from such boundary waters.

(a) For regulating streams, channels or water courses by changing, widening, deepening, straightening the same or otherwise improving the use and capacity thereof.

(b) For reclaiming by drainage, or filling, dyking, or otherwise protecting lands subject to overflow.

(c) For providing for irrigation where it may be needed.

(d) For regulating the flow of water in streams or water courses.

(e) For regulation and control of flood waters and the prevention of floods, by deepening, widening, straightening or dyking the channels of any stream or water course, and by the construction of reservoirs or other means to hold and control such waters.

(f) For diverting in whole or in part streams or water course and regulating the use thereof, and as incident to and for the purpose of accomplishing and effectuating all the purposes of this act, may make all such orders as may be necessary to authorize and direct the straightening, widening, deepening or changing of the course or terminus of any natural or artificial water course and to build, construct or maintain all necessary dykes, ditches, canals, levys, wall-embankments, bridges, dams, sluice ways, locks and other structures that may be found necessary and advisable, and to create and establish and maintain the necessary reservoirs or other structures; to hold, control and regulate any and all flood waters within said districts, and acquire title to, in the name of said district of all necessary lands and other property to construct and maintain reservoirs, dykes or other structures to secure the proper control of the flood waters within said district. Provided, nothing in this act contained shall be construed to interfere with the operation and use of any drainage law of this state. ('17 c. 442 § 1)

See § [5671—]34.

[5671—]2. **Petition—Limits of district**—Before any district court shall establish any drainage and flood control district as outlined in section 1 of this act [5671—1], a petition shall be filed in the office of the clerk of the district court in any county containing territory to the extent of five townships included in said proposed district which shall be signed by not less than 25 resident free holders from each county abutting upon the main stream of the district having more than five townships within the proposed district.

Said petition shall set forth:

1. The proposed name of said district.
2. The necessity for the proposed work; and that it will be conducive to the public health, safety and convenience and promote the welfare of the inhabitants of said district; and aid in the control of flood waters in said boundary waters and streams or rivers flowing into or from the same in this state.
3. A general description of the nature and purposes of the contemplated plan of improvement, explaining the necessity therefor, and shall include, in general terms, a description of the territory proposed to be included in said district. Said description need not be given by metes and bounds or by legal sub-division, but shall be a sufficiently definite and accurate description so that the territory affected may be generally understood, and, unless good reason be shown to the contrary, the same shall include all territory within a given watershed or drainage basin or all territory from which the water from natural or artificial channels find their course through one general stream or channel. The territory to be thus included in any district shall be limited to territory within the natural watershed of the particular basin petitioned to be organized.
4. Said petition shall pray for the organization of the district, the appointment of a governing board therefor and that the boundaries thereof may be specifically fixed and defined by order of said court and said district organized.

No petition containing a requisite number of signatures or petitioners shall be void or dismissed on account of any defects therein but the court shall at any time permit the petition to be amended in form and substance to conform to the facts by correcting any errors in the description of the territory or by supplying any of the defects therein. Several similar petitions or duplicate copies of the same petition for the organization of the same district may be filed and all together be regarded as one petition and any withdrawal of any signatures or petitioners from such petition after the same has been filed, shall in no manner affect the jurisdiction of the court, and all petitions filed prior to the hearing hereinafter provided shall be considered by the court as a part of the original petition. Provided; that no district shall be organized under the provisions of this act in any basin consisting of a stream or river wherein waters are flowing from any lake or body of water constituting the boundary waters where the territory of said district shall extend farther than forty miles in a direct line along said valley from said boundary waters, but may include all tributaries that enter said basin or connect said stream within the limits of said district. ('17 c. 442 § 2)

[5671—]3. **Bond**—At the time of filing the petition provided for in section 2, of this act [5671—2], or before the notice of hearing thereon is given, a bond shall be filed by said petitioners with the clerk, to be approved by said court and in such sum as he shall designate, sufficient to pay all expenses connected with said proceeding, in case the court refuses to organize said district, and, if at any time during the proceeding the court shall be satisfied that an additional bond is needed, he may so order, provided that if the petition is signed by the proper officials of two or more counties, accompanied by a copy of a resolution passed by the board of county commissioners of said counties, that said counties will be responsible for such costs, then, and in that event, no bond shall be necessary. ('17 c. 442 § 3)

[5671—]4. **Order for hearing—Notice**—Upon the filing of said petition with the clerk of the district court, as provided in section 3 of this act [5671—3], he shall immediately notify the judge of said court of the filing

thereof, who shall within ten days thereafter, by order, fix a time and place for hearing on said petition at some point within the limits of said proposed district, notice of which hearing shall be given by a publication in at least one legal newspaper in each county affected by said petition, for three successive weeks, the last of which publication shall be at least ten days prior to the date set for hearing, provided, that if the territory described in said petition shall include more than one county and territory within two or more judicial districts, then the judge of said court, where said petition is filed, shall arrange with the judge or judges of such other districts for a joint hearing upon such petition, which hearing may be at such time and place, within the territory described in said petition, as said judges shall jointly specify, and the finding by the majority of said judges shall be treated as the finding of said court and at said hearing such districts shall be represented by one judge only; but the district court, in which said petition was originally filed, shall for all other purposes, except for the purpose of said joint hearing, and except as hereinafter otherwise provided, have and retain original jurisdiction; but the absence from said hearing of the judge of one or more of said districts shall not affect the judgment or decree then entered providing two or more judges are present. ('17 c. 442 § 4)

[5671—]5. **Hearing—Findings and order—District to be body corporate, etc.**—At the time and place set for hearing on said petition, all parties interested may appear and be heard for and against the granting of said petition, but no delay shall be granted at said hearing except when necessary and as the court may order, and if upon said hearing it shall appear that the purpose of this act would be subserved by the creation of a drainage and flood control district, comprising the whole or certain portions of the territory outlined in the petition, and the court shall so determine, then said court shall immediately make and file its findings of all matters involved in said petition, and shall by order, direct and declare said district organized, designating in said order the name by which it shall thereafter be known, and upon the filing of said order with the clerk of the court, where said petition was filed, and a certified copy thereof in the office of secretary of state, said district shall be and become for all purposes of this act, a body corporate endowed with all the rights, privileges and authorities herein designated, with power to sue and be sued, to incur debts and obligations and to do and perform and exercise all the rights and privileges in this act enumerated.

Said order or decree shall designate the place where the office or principal place of business of the district shall be located, which, unless special reasons arise to the contrary, shall be where the petition is filed; shall designate the number of directors or officers who shall constitute the first board of directors of said district, who shall be no less than three or more than five, and, there shall be one director resident of each county having more than 5 townships within said district.

If upon said hearing the court finds that any portion of the territory named in said petition should not be included in said district the same may be excluded, but any territory not included in said petition within the forty mile limit hereinbefore defined may at said hearing or any subsequent hearing ordered by the court upon petition of twenty-five freeholders of said territory to be included be added to said district, and the boundaries thereof fixed accordingly, and if upon full hearing the court determine that the territory described in said petition or some part thereof should not be organized in said district, then said petition may be dismissed and the cost incurred be taxed against the petitioners. After an order is entered, establishing the district, the same shall be deemed final and binding upon all persons and property within said district, and the organization of said district shall not be collaterally questioned in any suit or action in any court in this state. ('17 c. 442 § 5)

[5671—]6. **Directors' meeting—Oath and bond—Officers—Meetings**—Within ten days after the filing of the order organizing said district, in the office of the secretary of state, the parties named therein as the first board of directors shall meet at the office of the clerk of the district court, where said

petition was filed, each take and severally subscribe the oath provided by statute, to be taken by public officials, and shall severally file with the clerk of said court a bond in the sum of five thousand (\$5,000.00) dollars, furnished by a proper surety company, the cost to be paid by the District conditioned for the faithful performance of their duties, and shall thereupon organize, by electing one of their number as President, and one of their number or a third party as secretary or clerk of said board, and shall provide the necessary books and records, and if the place designated in said order, as the general offices for said district, shall be a county seat said board shall have the authority to elect the clerk of the district court of such county as clerk of said board, and thereupon and thereafter all papers filed with said clerk shall be and constitute a filing with said board, and the office of said clerk shall be the general office of said board, and it shall be the duty of said clerk to keep and preserve the record of said board in his office and to do and perform such duties as shall be designated and required by said board, who shall have authority to fix his compensation. If said board shall consist of more than five members they shall elect an executive committee of three of their members consisting of the president and two other members, who shall have active charge of all work and improvements under the direction of the board.

Said board shall meet at least semi-annually and at such other times as they may designate or as occasion may require, and at all such meetings a majority of the members thereof shall constitute a quorum and a legal meeting thereof may at any time be called upon eight (8) days notice by mail, given by the clerk or any member of the board. ('17 c. 442 § 6)

AUTHORITIES OF THE BOARD

[5671—]7. **Treasurer—Oath, bond and duties—**Chief engineer, attorney, etc.—Said Board shall have full authority to elect or appoint a treasurer, who shall be a resident of said district and may be one of their members, who, before entering upon his duties as such, shall subscribe the oath required by statute, in the case of public officials, and shall be required to give bonds in such sum as the board shall direct, which shall be not less than the total sum that shall at any time be in his hands or under his control belonging to said district which bond shall be by a surety company, to be approved by said board, and the duties of said treasurer shall be such as the board may from time to time designate, and among other things, it shall be his duty to receive all moneys belonging to said district and deposit the same in such bank or banks as the board shall designate, and it shall be the duty of said treasurer to require such banks to give a proper surety bond for the care and accounting for such moneys, and said treasurer shall pay out said money only on proper orders signed by the president and secretary of said board.

Said board may also employ a chief engineer and an attorney and such other engineers and attorneys or agents or assistants as may from time to time be needful and necessary and provide for their compensation, all of which expense shall be taken and treated as a part of the cost of each particular improvement. The chief engineer shall be superintendent of all the works and improvements and shall have general charge of all work pertaining to flood control within the limits of said district. ('17 c. 442 § 7)

[5671—]8. **Board of directors—Number and terms—Powers—**The members of the board of directors of said district shall hold their office, where their number does not exceed three (3), one for a period of 2 years, two for 4 years, and where their number shall consist of five (5) members, two of said board shall hold their office for the period of two years; three for the period of four years, and in all other cases where the total number is divisible by two then one-half shall be appointed for (and hold their office for two years and the other one-half for four years), and if there is an odd number then the extra member shall hold his office for four years, and thereafter all shall be appointed for four years, and the judge of the district wherein the county is located shall have authority to and shall fill vacancies that occur in said board from any cause in the counties in his district; and each member of said board

shall hold his office until his successor is elected and qualified. And said board when organized shall for all purposes of this act be and constitute a commission for the purpose of carrying into effect any and all orders, judgments, decrees or directions made by the district court relative to any improvement authorized by this act, within the limits of said district. ('17 c. 442 § 8)

[5671—]9. **Petition—Bond—Duty of directors—Surveys, maps, etc.—Report of engineer—Statement of benefits and damages, etc.—Contracts with officials of other states—Joint plan**—After the organization of the board of directors of any drainage and flood control district organized under the provisions of this act, said board of directors shall upon the filing with them of a petition signed by not less than 25 freeholders of said district, or by the board of county commissioners of any county or council of any village or city likely to be affected by the proposed improvement therein asking for the construction of any of the improvements authorized by the provisions of this act relative to drainage or flood control of any waters or any lake, pond, marsh or body of water or river, stream or water course within said district, therein describing the nature of the proposed improvement, the extent thereof and describing the bodies of water, stream or water course proposed to be improved or reservoir or other improvement constructed and if the construction of a ditch or drain as a part of the proposed improvement, a description of the starting place, the general course and terminus thereof and setting forth the reasons and necessity for such improvement and that the same will affect the public health and general welfare and said petition is accompanied by a bond signed by said petitioners, or any number of them or other parties in their behalf in such sum as the board of directors of said district may specify conditioned for the payment of all costs and expenses in the event said petition is not granted, it shall be the duty of said board of directors of said district to cause to be made at the earliest date possible by its engineer all necessary surveys, maps, plats, profiles, and plans covering said proposed improvement and said board of directors or not less than 3 of them shall upon receipt of the report of their engineer proceed to personally inspect and examine all lands, highways or other property likely to be affected by such improvement or that may be used or taken for the construction or maintenance thereof and make and file in their office with said plans and specifications a detailed statement showing the benefits and damages that will result to all individuals, property of corporation from the construction of said improvement and a list of the land claimed to be benefited and damaged and the amount thereof and of all land subject to assessment for the construction and maintenance of such improvement and if said improvement relates to any lake, body of water, stream or water course forming the boundary between this state and any other state and bordering on said district and is of such a nature as to call for, or render necessary the deepening, widening, straightening of the channel of any stream or water course forming the boundary line between this state and any other state or the dyking, and raising, lowering, or fixing the stage of water in any lake or body of water forming such boundary line or the deepening, straightening or dyking of any stream or river flowing into or from and materially affecting such boundary waters or the use or control thereof then and in that event the board of directors of said district are hereby authorized to confer with and enter into all necessary contracts and arrangements with the governing board of drainage district or other tribunal in charge of drainage and flood control in such adjoining state or states, affected by said proposed improvement, for the purpose [of] agreeing upon a joint plan for the making of said improvements and the nature and extent thereof, and shall have full authority, together with the representatives of said other state or states to employ one or more engineers to make a joint survey of such boundary waters and water courses and to report to said joint contracting parties all such information as they may require to enable them to determine and agree upon a joint plan for the construction of the proposed improvement and may make all necessary arrangements for all expense that will be incurred in

connection with the making of said survey and report by said engineers and adoption of said joint plan. ('17 c. 442 § 9)

[5671—]10. Procedure of joint contracting parties—Hearing—Viewers—Report—Benefits and damages—Joint hearing and notice—Division of costs—Upon the filing of the report of the engineers appointed as provided in section 9 of this act [5671—9], with the commissioners or board of directors of said drainage district in this state and with the commissioners or tribunals representing drainage in such other state, said joint contracting parties shall proceed to consider such report and to adopt such joint plan for the construction of the proposed improvement and said joint contracting parties may give notice of a hearing of the time and place for the consideration of said report and adoption of said joint plan if deemed advisable but upon the adoption of said plan said joint contracting parties shall have authority to and shall appoint three (3) disinterested parties to act as viewers, at least one of each shall be resident of each state and who shall, after taking the oath for the faithful performance of their duties, proceed together with said engineer to examine all the property affected or that is likely to be affected by the construction of the proposed improvement and shall make such report as shall be required and among other things shall give a full description of all property and corporations affected by said improvement together with a statement of benefits and damages that will result thereto; and it shall be their duty to assess the benefits and damages upon the property in the various states upon the same basis so that each will be charged and credited with their proper proportion of the benefits received and damages sustained and shall include in said report a statement of the total cost of the proposed improvement including damages and all costs and expenses and shall make such report in duplicate or triplicate as the case may require and file one copy with the representative of each state and upon the filing of said reports, said board of directors of the drainage district in this state and the representative of such other state or states shall fix a time and place in the vicinity of the proposed improvement or some part thereof convenient of access to all parties interested, for a hearing upon said report of the viewers and engineers of which hearing notice shall be given by publication for two (2) successive weeks in at least one weekly newspaper published in each county containing property affected by said improvement the last of which publication shall be at least eight (8) days prior to the date set for hearing; at which hearing the representatives of the several states shall attend in joint session and all parties interested shall be given a hearing for or against any matters contained in the report of said viewers and engineers including joint plan and benefits and damages and the said representatives of the drainage and flood control district in this state and representatives from such other state or states shall have full authority to consider and modify said report and after full hearing to adopt or reject the same; and if it shall then appear that the amount assessable against the property and corporations benefited shall be greater than the benefits received, then said petition shall be dismissed but if it shall appear that the total benefits are greater than the total sums assessable against the property and corporations benefited and that such improvement will be of great public benefit same shall be adopted; and in that event, it shall be the duty of said joint contracting parties then in session to divide the total cost of said improvement including all expenses in any manner connected therewith, among the several states in proportion to the benefits received as shown by said reports as finally adopted and the joint plans as thus adopted and the division of the total costs so assigned to the several states shall be binding upon all parties to said joint arrangement in all subsequent proceedings relating thereto and the findings and order so made by the parties to said joint arrangement shall be executed in duplicate or in triplicate as the case may require and filed with the proper representatives of the several states. ('17 c. 442 § 10)

[5671—]11. Petition to district court—Notice of hearing—The board of directors of such drainage and flood control district in this state upon the filing in their office of the report required to be made by them under the provi-

sions of section 9 [5671—9], where the proposed improvement relates to streams or bodies of water lying wholly within this state, or upon filing in their office where the proposed improvement relates to boundary waters or water courses, of the engineers and viewers report and the report and findings of said joint conference including the findings as to joint plans and division of the total cost of construction among the several states as provided in section 10 [5671—10], of this act, said board shall cause to be made a petition to the district court in the county where the proposed improvement or some part thereof is located, therein petitioning said court for authority to construct said improvement as shown in the original petition filed with said board or as subsequently modified by them and the finding and reports filed in their office relating to said improvement therein setting forth the necessity for such improvement and fully describing the nature and purpose thereof and setting forth the facts required to be alleged in case of petitions to the district court in judicial ditch proceedings required by the laws of this state and the engineers and viewers report where the same relates to boundary waters and in all other cases the engineers report and the report of said board as to the benefits and damages shall be referred to or attached and made a part of said petition and asking that the time and place be fixed by said court for a hearing upon said petition and reports and requiring all parties interested to appear and show cause why the reports accompanying said petition should not be adopted and the rights of all parties interested fixed and determined and said improvement ordered constructed in accordance with said report and said petition. Upon the filing of such petitions and such reports with the clerk of said court, he shall immediately notify the judge thereof who shall within ten days fix a time and place for hearing upon said petition and report which may be in any county most convenient for the parties interested, due notice of which shall be given by publication for two (2) weeks in one newspaper published in each county affected by the proposed improvement, which notice shall contain a description of the property affected and the names of the owners thereof as appears in the office of the county treasurer on the last assessment roll of said county together with the names of all corporations affected by such proceedings, a copy of which notice shall also be mailed by the clerk to each property owner, at least two weeks before the date set for hearing at his last known address or if not known, as shown by the records in the county treasurer's office where the property is located and requiring all parties in any manner interested to appear before said court at the time and place specified in said notice to show cause why the reports accompanying said petition should not be confirmed and the prayer of said petition granted and said improvement ordered constructed in accordance with the plans and specifications and the report of the engineer and viewers or directors accompanying said petition. Upon the filing of said petition and reports and the publication and mailing of said notice, said court shall have full jurisdiction of all parties, corporations, property and matters named and referred to in said petition and said reports and the holders of all mortgages and liens against all lands, therein described. ('17 c. 442 § 11)

[5671—]12. **Hearing—Findings and order**—At the time and place specified in the notice of hearing provided for in the last section, the judge of said court or the judge of any other district court upon his request, shall appear and hear all parties for and against the matters set forth in said petition and reports accompanying the same and may amend or modify the same, provided, he shall have no authority to modify the order adopting the joint plan or the order dividing the total cost among the several states and, if upon full hearing it shall appear that the total benefits resulting from said improvement together with the total sum assessable against property not directly benefited as reported by the board of said district shall exceed the total cost of said improvement including the damages and that said improvement will be of great public benefit and utility, then the said court shall make its findings accordingly and shall by order confirm the report of the engineer and viewers or the report of the board of said district as found and fixed by him, and shall order

the construction of said improvement accordingly and such findings and order of said court shall fix and determine the rights of all parties affected in accordance therewith subject only to the right of appeal as provided in this act. ('17 c. 442 § 12)

[5671—]13. **Appeals—Hearing before other judge, etc.**—Any parties or corporations interested or affected by the order of the court directing the construction of any improvement as provided in section 12, of this act [5671—12], may within twenty (20) days from the date of said order appeal therefrom upon the grounds and upon like notice as now provided for appeals in county or judicial ditch proceedings by section 5534 of General Statutes of 1913, and the provisions of said section shall apply to and govern appeals under this act, and the board of directors of said drainage district shall have a like right of appeal and shall also have the right of appeal from the order of the court denying their petition for the construction of said improvement and any appellant in their notice of appeal may demand a hearing before another judge or before a jury and in the event of a demand for hearing before another judge the judge of said court shall provide for the trial of said appeals before another judge but no appeal shall be granted from an order granting the petition of said board and ordering the construction of said improvement, provided further, that no appeal taken on the question of benefits and damages shall delay further proceedings towards the construction of said improvement. ('17 c. 442 § 13)

[5671—]14. **Assessment of lands outside district**—Whenever the board of directors of any district shall ascertain that any improvement will benefit lands outside the district they shall assess such lands for such benefit as though within the district and report such facts to the court, together with their findings and recommendation; and thereupon notice of the filing of such assessment and recommendation shall be served upon the parties interested and they shall be given the same notice of hearing upon said petition and for assessment as provided for in case all parties affected by said proceedings are within the district, and said assessments considered modified or confirmed as in other cases and at any time upon filing with the district court, where the original petition was filed, a petition by the board of directors of any district or any parties in interest outside the district asking for a change of the boundary lines of said district, either adding to or taking from said district any territory, the court shall upon the filing of said petition, cause notice thereof to be given and hearing had thereupon in the same manner, and with like effect as in the original hearing for the formation of the district, except the notice to be published, shall be only in such counties as shall be directly affected by such change. Provided no assessments shall be levied under the provisions of this section upon lands directly benefited in excess of ten miles outside of the boundary of the district as fixed by the forty mile limitation provided for in this act. ('17 c. 442 § 14)

[5671—]15. **Contracts for construction, how let, etc.**—The board of directors of any district organized under the provisions of this act shall have full authority to let contracts for the construction of and cause to be constructed any and all works of improvement, in accordance with the order of the court and the plans and specifications referred to in such order, said contract to be let only on three weeks' published notice calling for bids at such time and place as the board shall designate, and may employ and use men and equipment under the supervision of the chief engineer or other agents, of all portions of said works not let by contract, and may cause to be repaired any and all works of improvement by this act authorized to be constructed and to employ men therefor; said work to be done under the direction of the chief engineer or his assistants and the cost of all such work except those of repair shall be treated and considered as part of the construction. Provided: No money shall be expended in the construction of said work except those in the preparation of the necessary surveys and plans including the work of viewing and estimating the amount of benefits and damages or connected therewith until after a petition for such construction has been filed and the

same ordered constructed as provided in this act, and in the event that the said improvement relates to boundary waters or water courses then said board of such district shall have full authority to enter into and make all necessary contracts and arrangements with the board, commission or other tribunal of any adjoining state or states interested in such improvement for the letting of the contract for such improvement and the said board together with the representatives of said other states shall have full authority to advertise and call for bids for the construction of such improvements, giving such notice of the time and place of opening bids as said parties may provide and shall have full authority to make all necessary arrangements relative to the making of said contracts, the form of the contracts and the supervision of the work and payment therefor but said contract shall provide for the completion of said work in accordance with the plans and specifications within a given time and shall require sufficient bonds to secure the performance of said contract and shall further provide that the said drainage district or authorities in this state shall not be responsible except for the furnishing of the funds provided to be furnished by this state and the completion of so much of the improvement as lies within the limits of this state and may contain like provisions relative to the rights of the authorities representing such other state or states. The board of directors of such district shall also have authority to enter into such contracts or arrangements as may be deemed advisable with the authorities of such other state or states relative to the cost of repair, improvements and upkeep of all parts of said improvement connected with such boundary waters or water courses and provide the funds therefor and also for a proper division of any income that may be realized from use of such waters. ('17 c. 442 § 15)

[5671—]16. **Entry on lands for surveys and examinations**—The board of directors of any district organized under this act and their agents and employees, including contractors, may enter upon lands within or without the district in order to make surveys and examinations to accomplish all necessary preliminary purposes, the district being liable only for any actual damage done, and any person or corporation preventing such entrance shall be guilty of a misdemeanor. ('17 c. 442 § 16)

[5671—]17. **Eminent domain—Bonds, etc.**—Said board shall also have the authority to condemn, for the use of the district, any land or property within said district when the same shall become necessary to protect the property of the district and to carry out the purpose of this act, and when it shall appear that in any proceedings to establish any improvement including reservoirs or holding basins or other similar improvements, that sufficient land was not acquired in said proceedings to properly handle and control the waters in said reservoir or protect adjoining property from such waters or the waters of any stream, ditch or watercourse, or when the board shall determine that it is necessary and advisable to increase the size of any lake, basin or reservoir previously established and desire further lands to properly create and utilize the same, the said board may acquire title thereto for the benefit of the district, by filing a petition with the district court of any county in said district wherein said reservoir or other improvements or some parts thereof is located, accompanied by proper plats, plans and specifications, as provided in section 11 of this act [5671—11], and thereupon after hearing as therein provided for, the court may by order provide for the appropriation of such land, if it shall be shown that the same is necessary and advisable, and assess the damages resulting therefrom as in other cases providing for the construction of improvements for flood control.

In all cases where a reservoir is created, either in a natural basin or otherwise, and said board shall conclude that the creation of said reservoir will create a waterpower or establish conditions whereby waterpower can profitably be constructed in connection with said reservoir, said board either in the original petition provided for the creation of said reservoir, or at any subsequent time may petition the court, presenting maps and details therewith and ask that such additional land and other rights or privileges as may be deemed necessary be condemned and title acquired in connection with said reservoir

property, to enable said board to improve the same and use the waters of said reservoir and other waters in any manner connected therewith for waterpower purposes, to the end that the waters of said reservoir or holding basins together with all streams connected therewith may be utilized and produce income for the benefit of said district and to aid in the general expense thereof, and in the upkeep of all drainage and flood control improvements within said district.

Said board may also include in said petition a statement giving the reasonable value of said property owned by the district in connection with said reservoir and proposed water power and a detailed estimate of the amount of water power likely to be produced by the proposed improvement and the probable income to be derived therefrom annually; and may in said petition ask the court to fix and determine the amount of bonds that the board may issue against the property of the district in connection with said reservoir together with the income therefrom and the court shall have authority to authorize said board to issue the bonds of said district in such sum as such improvement may require not to exceed 60% of the reasonable value of the proposed water power, and not to exceed such sum as the income from said water power may reasonably be expected to pay the interest on; and upon the making of said order, the board of directors are hereby authorized to issue the bonds of said district not to exceed such sum as specified in the order of the court in such denomination and in such form as the board may determine, payable in not less than 10 or not more than 20 years from date with interest not to exceed 6% per annum payable annually, which bond shall be signed by the clerk and president of said board and registered in the same manner as county bonds under the laws of this state and upon the issuance of said bonds it shall be the duty of said board to create an interest fund and provide for the accumulation of the necessary sum to pay the interest on said bonds promptly when due.

If, at the time of the filing of the petition for the establishment of any reservoir or holding basin or at any time thereafter it shall appear that the waters of such reservoir or holding basin can be utilized for the purpose of irrigation or for any other purpose and the board of such district shall, after examination, so determine, it may cause to be made all necessary plats, plans and specifications and upon filing the same, together with a petition with the clerk of the district court of any county affected and by such proposed improvements or use, a hearing shall be had thereon upon like notice, as provided in section 11 of this act [5671—11], at which hearing the court, after due consideration of the showing made, shall have authority to make such order as may be necessary to authorize said board to acquire title to all necessary rights of way, ditches or property to enable it to utilize waters of any such reservoir for irrigation purposes and to hold, keep and control the same and all property so acquired in any such proceeding shall be and become the property of said district. ('17 c. 442 § 17)

[5671—]18. **Contracts with United States government, state governments, etc.**—The board of directors shall also have the right and authority to enter into contracts or other arrangements with the United States Government or any department thereof, with persons, railroads or other corporations, with public corporations, and state government of this or other states, with drainage, flood control, conservation, conservancy, or other improvement districts, in this or other states, for co-operation or assistance in constructing, maintaining, using and operating the works of the district or the waters thereof, or for making surveys and investigations or reports thereon; and may purchase, lease or acquire land in other property in adjoining states in order to secure outlets to construct and maintain dykes or dams, or for other purposes of this act, and may let contracts or spend money for securing such outlets or other works in adjoining states. Provided, that no board of directors of any drainage district organized under the provisions of this act shall have the right, power, or authority to connect by artificial means boundary waters having different natural outlets so that the waters of one may be discharged into the other. Provided that nothing

herein contained shall interfere with any action by the Congress of the United States. ('17 c. 442 § 18)

[5671—]19. **Rights of various parties to waters—Lease or permission to use—Applications—Preferences—Regulations—Rates—Right of state, etc.—**The rights of land owners, municipalities, corporations, and other users of water to the waters of the district for domestic use, water supply, industrial purposes, for water power, or for any other purposes shall extend only to such rights as were owned by them prior to the organization of the district. Wherever the organization of, or the improvements made by the district make possible a greater, better or more convenient use of, or benefit from, the waters of the district for any purpose, the right of such greater, better, or more convenient use of, or benefit from, such waters shall be the property of the district; and such rights may be leased, or assigned by the district in return for reasonable compensation; but the appraisal of benefits made by the board or any appraisers in any proceeding for the establishment of any improvement under the provisions of this act shall not be construed to in any manner include benefits for such greater, better or more convenient use of or benefit from the waters of the district, unless so specified in the petition or report of the board, but the compensation for such benefits shall be made in accordance with the provisions of this section except as hereinafter provided.

Persons, corporations, municipalities, or other parties desiring to secure such use of the waters or water courses of the district or of the district rights therein, may make application to the board of directors for lease or permission for such use. Such application shall state the purpose and character of such use, the period and degree of continuity and of the amount of water desired. In case any party makes greater, better or more convenient use of the waters of the district without formal application the fact of such use shall serve all purposes of an application, and the board may proceed to determine a reasonable rate of compensation the same as though formal application had been made. Where it is not possible nor reasonable to grant all applications, preference shall be given to the greatest need and to the most reasonable use, as may be determined by the board of directors, subject to the approval of the court. Preference shall be given, first to domestic and municipal water supply, and no charge shall be made for the use of water taken by private persons for home and farm yard use, or for watering stock.

The board of directors shall not permanently sell, lease, assign or grant any permit or otherwise part with permanent control by the district of the use of the waters thereof and the rates for light, power or other services charged by vendees, assignees, lessees or licensees of such district, but such leases, assignments or permits of any kind or other contracts for the use of water shall be entered into only after a report has been made by the board of such district to the court setting forth the terms and conditions of said lease, permit or other contract relative to the use of any property of the district, whereupon, the clerk of said court shall give due notice to all parties interested by mail, and shall cause to be published notice of said application stating therein the purpose of said application and the time and place of hearing thereof, at which time the court may hear all showing made for and against such proposed contract and make its order accordingly; but subject to revision and control by the state law and such conditions and restrictions as may be necessary at all times to protect the interests of said district and of the public; said leases or permits may be made for periods not to exceed ten (10) years but subject to said conditions and subject to the right of renewal for further reasonable period not to exceed ten (10) years on condition that a new determination may be made as to the reasonable charge therefor.

The board of directors may make regulations for the determination and measurement of the increased, or better, or more convenient use of, or benefit from the water supply of the district, for the purpose of determining rates of compensation, and for the purpose of securing to all parties interested the greatest and best use of the water thereof. The board shall have power to determine the rates of compensation for such greater, better, or more convenient use of, or benefit from the water supply of the district, which rates

of compensation shall be reasonable, and may require bond to be given to secure the payment for such use. Upon the determination of any rate, or rates, the board shall make a report of its determination to the court. The court shall thereupon cause personal notice by summons to be given to the parties interested, stating that such determination of rate, has been made, that a hearing before the court will be had thereon on a certain day, and that objection may be made at such time to such determination of rates. A hearing may be made before the court, objections may be made and appeals taken in the same manner as in case of the appraisal of benefits, but the rate as fixed by the court shall control until modified on appeal. In case no appeal is made within the time provided, or upon the final determination of the matter by the court, the determination of such rates of compensation shall be conclusive and binding for the term and under the conditions specified in the lease or other agreement. The right of the district, its successors, assigns and lessees, and of land owners, municipalities, corporations and all other users of the waters of the district to use such water for water power purposes, shall ever be subordinate to the right of the state, to acquire such water powers; and the state may at any time acquire such water power rights by paying to the governing boards of such drainage and flood control district for the use of such district and of persons, firms and corporations claiming under such district, the excess of the cost of improvements made pursuant to this act and damages therefrom, over the benefits to lands affected. ('17 c. 442 § 19)

FINANCIAL PROVISIONS

[5671—]20. **Separate funds**—The moneys of any drainage and flood control district organized under the provisions of this act shall consist of three (3) separate funds:

1. A preliminary fund, which shall consist of funds to be provided as hereinafter specified, and can be used for preliminary work and general expenses.

2. A bond fund, which is the proceeds of bonds issued by said district, as herein provided, upon property of the district that is producing or likely to produce a regular income and to be used for the payments of the purchase price of said property of the value thereof, fixed by the court in proceeding, as herein provided, and for the improvement and development of such property.

3. A maintenance fund, which shall be supplied by special assessments to be levied from time to time as occasion may require to supply funds for the upkeep of the property and improvement of the districts including the reservoirs, ditches, dykes, canals and other improvements, together with the expenses incident to, and connected therewith. ('17 c. 442 § 20)

[5671—]21. **Costs, how paid—Preliminary expenses—Preliminary fund**—After the filing of a petition under this act for the formation of a district, and the furnishing and filing of the bond, as provided in section 2 of this act [5671—2], the costs of publication and other official costs of such proceedings shall be paid out of the general funds of the county in which the petition is pending. Such payment shall be made on the warrant of the auditor, on the order of the court. In case the district is organized, such costs shall be repaid to the county out of the first funds received by the district, through the levying of taxes or assessments or selling of bonds, or the borrowing of money. If the district is not organized, then the costs shall be collected from the petitioners or their bondsmen; upon the organization of the district the court shall make an order dividing the preliminary expenses between the counties included in the district in proportion to the interests of the various counties as may be estimated by the court; and the court shall issue an order to the auditor of each county to issue his warrant upon the treasurer, for the proportion of the preliminary expenses assigned to that county by order of the court.

As soon as the district shall have been organized under the provisions of this act, and a board of directors shall have been appointed and qualified;

said board may file a petition with the district court in the county where said original petition was filed, asking that an order be made creating a preliminary fund for said district, which shall be of a size in proportion to the size of said district, and in the event said district shall include a number of counties, said funds shall not exceed the sum of \$10,000 and may be of such less amount as the court may order, and the court, upon said hearing, may designate the amount of said funds and fix the proportionate amount that each county affected by said district shall pay in proportion to the area within said district, and thereupon the court shall order each of said several counties to advance from its general fund, the sum there named to constitute a preliminary fund for said district, and thereupon the auditors of said several counties shall draw their warrant upon the treasury of their county for the payment of the amount specified in the court's order payable to the treasurer of said district, and the sum so advanced by each county shall be charged to said district and shall be repaid to each of said several counties as soon as said district has funds for that purpose, and the funds so provided shall be used by the board of said district for preliminary work, and when said board shall incur expense for surveys or other preliminary work, on any proposed improvement, all expense including time, salaries or otherwise connected with such work shall be kept track of and figured in as the cost of construction in any such proposed improvement, and upon said improvement being ordered by the court and funds being provided for the construction thereof, as hereinafter specified, all sums advanced out of said preliminary funds shall be repaid and said funds replaced for further similar use on other improvements. ('17 c. 442 § 21)

[5671—]22. **Apportionment of total costs between counties—Itemized statement—Duties of county officers—**At the time set for hearing on the report and petition of the board of directors of any district and the report of the engineer asking for the establishment of any improvement under the provisions of this act or at any time subsequent thereto, upon 5 days notice in writing to the auditors of the several counties affected by such improvement, the court shall apportion the amount of the total costs of the construction of said improvements among the several counties affected in proportion to the benefits received and shall fix and determine the amount to be paid by each and upon similar notice to said county auditors, said judge of the district court may at any time modify said order as justice may require, or make additional orders covering additional expense. The word "expense" as used in this section shall be construed to mean every item of cost of said improvement from its inception to its completion and all fees and expenses paid or incurred, including all damages awarded, and upon the filing of said order with the clerk of the court where said proceedings are pending, it shall be the duty of said clerk to make and file certified copies of said order with the auditors of the respective counties affected, together with certified copies of the order confirming the report of the board of viewers and the engineer and directing the construction of said improvement a list of all property affected in said counties and a statement of all benefits and damages affecting the same, and such other information as the court by order may direct, it shall be the duty of the county commissioners of said counties to provide the necessary funds to meet their proportionate share of said improvement in the same manner as now provided in the case of judicial ditch proceedings. That immediately or at the earliest date possible, following the letting of a contract or contracts for the construction of any improvement, by the board of directors of said district, they shall cause to be made and filed with the clerk of said court where said proceedings are pending an itemized statement of all expenses incurred in the construction of said improvement including the amount for which said ditch was sold, the estimated cost of supervision, fees and all other ascertainable expense in connection therewith, and thereupon it shall be the duty of the clerk of said court to make out a statement and summary or tabular statement as required by section 5543, General Statutes 1913, and show all such expense connected with the construction of said improvement and the total estimated benefits to be derived therefrom and shall

ascertain the rate or cost of each dollar of benefits that said improvement will cost as provided in said section and shall include in said statement as provided in said section the amount that each tract of land, municipal, or public or corporate road is chargeable with, and shall file said statement in his office and shall make and file certified copies thereof with the county auditor of each county affected by said improvement and shall have attached hereto a list of all property roads or corporations assessed for benefits or allowed damages within such county with the amounts assessed or allowed to each; and thereupon it shall become the duty of the county auditor of the respective counties to make and file a statement and lien and proceed to levy and assess against the property benefited and the property subject to assessment within his county, the amount to be paid by said county, in accordance with the provisions of section 5544 of the General Statutes of 1913. And it shall be the duty of the county commissioners of said several counties to provide the funds to meet the proportionate share of the total cost of said improvement, as shown by the report of the board in said drainage and flood control district and they are hereby authorized to exercise all rights and authority in so doing, now granting to county boards or boards of county commissioners under the provisions of section 5542, of the General Statutes of 1913, and other provisions of the General Statutes, relating to county and judicial ditch proceedings, and the said board of county commissioners and the said county auditor and county treasurer and register of deeds are hereby authorized and directed to exercise the authority and perform the several duties assigned to such officials or any of them under the provisions of section 5544 and section 5548 of the General Statutes of 1913 relative to the establishment of liens, and the assessment and collection by installments of all sums levied against property within their respective counties for benefits resulting from the construction of said improvement and to exercise such other authority and perform such other duties relative to the establishment of liens, filing of statements or additional statements and liens as now provided by the laws of this state relating to county and judicial ditches, and the county board is authorized to make the necessary order specifying the period and times of payment of said assessment and the rate of interest. And all moneys received by the county treasurer of any county from the sale of bonds, assessment or otherwise for the benefit of the district shall be by the treasurer of each county accounted for and paid over to the treasurer of said district, and it shall be the duty of the board of said district to pay all damages before entering upon the land, except in case of appeal. ('17 c. 442 § 22)

[5671—]23. **Duties of county auditors—Assessment, etc.**—Upon the filing by the board of directors of a drainage and flood control district, with the county auditor of any county, of a statement, as provided in section 22 of this act [5671—22], giving a list of the property and corporations benefited or damaged or otherwise affected by any proposed improvement, it shall be the duty of the county auditor to assess, the amount specified in such list against the municipalities or other corporations, as therein specified, in accordance with the provisions of section 5551 of the General Statutes of 1913; and said county auditors respectively shall proceed to levy and collect the sums specified in said list against the several corporations in accordance with the provisions of said section, and in the event that any improvement reported in said list shall be for improvements or benefits to any county or state road, then, and in that event, the sum so reported shall become a direct charge against said county and may be paid by said county out of its road and bridge fund or otherwise, as its board of county commissioners may direct, and may be paid in whole or in installments, as may be specified by the board of county commissioners of each county. Provided, that no assessment shall be levied against any property or corporation benefited under the provisions of this act in excess of the amount of benefit received, as fixed by the order of court directing the construction of said improvement, or as subsequently determined on appeal. ('17 c. 442 § 23)

[5671—]24. **Orders for payment**—The board of directors of any drainage and flood control district is hereby authorized to issue the orders of said dis-

trict on payment for any contract for the construction of any improvement, and also for all ordinary general expenses, and for all expenses incurred by contract or otherwise in making reports and when sufficient funds are not available to pay the same, said order shall after presentation to the treasurer of the district, draw interest at the rate of 6% per annum until paid or until notice shall be given by the district that such funds are available. ('17 c. 442 § 24)

[5671—]25. **Levy for upkeep and repairs—Apportionment between counties**—The board of directors of any drainage and flood control district, organized under this act, are hereby authorized after the construction of any improvement, to levy from time to time as occasion may require upon the land benefited by such improvement, such sum as the court may order or direct upon application by the board, for the purpose of providing funds for the upkeep and repairs of such improvement, and upon filing a copy of said order and levy with the county auditor of each county affected by said improvement accompanied by a list of the property within the limits of said county affected by said levy it shall be the duty of said county auditor to extend said levy against said property within the limits of his county as provided in other cases for the levy, assessment and collection of taxes ordered, levied and collected by the board of county commissioners in ditch proceedings, and upon like application the board of directors of any drainage and flood control district are hereby authorized to levy upon the property of the district such sum as the court may authorize and direct to cover the general expenses of the board, not to exceed, however, in any one district the sum of five thousand (\$5,000) dollars, and the court shall by such order, apportion the amount of such levy among the several counties, according to the area or valuations of the portion of each county within said district, and upon the filing of a copy of said order, showing the amount to be levied upon the property of said district, within the limits of each county, the auditor of such county shall levy the same upon that portion of the property of said county within the limits of said district in the same manner and with like effect as in the levy of other taxes by municipal corporations in this state; and all sums collected and received by the county treasurer of such county shall be accounted for to the treasurer of said drainage and flood control district; and the same shall be placed in the fund as provided in this act and used for the purposes for which said assessment was made. ('17 c. 442 § 25)

[5671—]26. **Powers of directors**—The board of directors of all drainage and flood control districts shall have charge and control of the public waters of said district and especially all bodies of water used as reservoirs and streams flowing into and from the same, and may cause said reservoirs, when deemed practicable, to be stocked with fish and shall have full charge and control of all fish caught in said waters for sale or other commercial purposes, and shall have the sole right and authority to make all contracts or issue all licenses therefor and in all cases such contracts shall provide for the payment of the reasonable value of such fish into the treasury of said district and said district shall receive all benefits and income therefrom, but said board shall have no authority to authorize the catching of any game fish for commercial purposes or to grant any authority relative to fishing in violation of the laws of this state nor interfere with private individuals fishing with hook and line or in such other manner as the laws of this state shall provide during the seasons when such fishing is permitted. ('17 c. 442 § 26)

[5671—]27. **Definition of terms**—Whenever the term "person" is used in this act and not otherwise specified, it shall be taken to mean and include person, firm, co-partnership, association or corporation, other than public or political subdivision, and whenever the term "public corporation" or "municipal corporation" shall be used, the same shall be taken to mean counties, townships, school districts, road districts, or other political divisions or subdivisions.

Whenever the term "court" is used it shall be taken to mean the district court or the judge thereof, and to apply to the district court wherein the peti-

tion for the organization of the district was filed and granted unless otherwise specified.

Whenever the term "Board" or "Board of Directors" or "Commissioners" is used in this act and not otherwise specified it shall be construed to mean the board of managers of the drainage district in this state in charge of the improvement; and whenever the term "joint contracting parties," is used, it shall be construed to mean the parties representing the board of directors of the drainage district or districts in his state in charge of the improvement and the board, commission or authorities representing such other state or states. ('17 c. 442 § 27)

[5671—]28. Classification of lands for assessment purposes—In all proceedings by the board of directors under the provisions of this act to assess benefits to any land resulting from any improvements said board shall as near as practicable divide said lands for the purpose of assessments into three (3) classes;

In Class No. 1, shall include all lands or corporations receiving direct benefits such as drainage or protection from overflow by flood control improvements.

In Class No. 2, shall include all lands or corporations to which are furnished a drainage outlet by the construction or improvement of any artificial or natural drain or water course.

In Class No. 3, shall include all lands that are now receiving or that need drainage and that are furnishing waters that will be handled or controlled by the proposed improvement.

Class 1 and 2 shall be treated as a direct assessment.

Class No. 3, may be treated as a secondary assessment to aid in the control of the waters furnished by said lands and all lands within or without the limits of said district falling within the classes 1 and 2 are hereby declared assessable for the construction of such improvement under the provisions of this act as lands directly benefited and all lands falling within the provisions designated as Class 3, are hereby declared assessable as lands receiving benefits from the general plan of drainage and flood control provided for by this act and assessable. ('17 c. 442 § 28)

[5671—]29. Powers of directors—Co-operation with boards of adjoining districts—The board of directors of any drainage and flood control district organized under this act shall have authority to enter into all necessary contracts to enable them to co-operate with the managing board of any adjoining district whether organized under this act or any other act authorized by the laws of this state relative to any matters connected with drainage or flood control or other matters connected with or relating to the management of affairs connected with said district and in the event that the formation of districts should be authorized by any other law of this state, enacted prior or subsequent to this act for the purpose of having charge of drainage and flood control matters and any such district should be formed bordering upon streams or bodies of water forming the boundary of this state, the governing board of such district shall have and may exercise all the authority granted by this act. ('17 c. 442 § 29)

[5671—]30. Directors' reports—At least once a year or oftener, if the court shall so order, the board of directors shall make a report to the court of its proceedings and an accounting of its receipts and disbursements to that date, which shall be filed with the clerk of said court, and it shall be the duty of said board from time to time to make such report as may be demanded by the public examiner, and it shall be the duty of the public examiner of this state to check up and report to the court not less than once a year and at such time as the court may direct, the financial condition of said district. ('17 c. 442 § 30)

[5671—]31. Failure to give notice, when not jurisdictional—Defective notice—Further notice—In any and every case where a notice is provided for in this act, if the court finds for any reason that due notice was not given, the court shall not thereby lose jurisdiction, and the proceeding in question shall

not thereby be void: but the court shall in that case order due notice to be given, and shall continue the hearing until such time as such notice shall be properly given, and thereupon shall proceed as though notice had been properly given in the first instance.

In case any individual appraisal or appraisals, assessment or assessments, or levy or levies, shall be held void for want of legal notice, or in case the board may determine that any notice with reference to any land or lands may be faulty, then the board may file a motion in the original cause asking that the court order notice to the owner of such land or lands given and set a time for hearing, as provided in this act. And in case the original notice as a whole was sufficient, and was faulty only with reference to publication as to certain tracts, only the owners of and persons interested in those particular tracts need be notified by subsequent notice. And if the publication of any notice in any county was defective or not made in time, republication of the defective notice need be had only in the county in which the defect occurred. ('17 c. 442 § 31)

[5671—]32. **Act liberally construed**—This act being necessary for securing the public health safety, convenience, or welfare, and being necessary for its prevention of great loss of life and for the security of public and private property from floods and other uncontrolled waters, it shall be liberally construed to effect the control and conservation and drainage of the waters of this state. ('17 c. 442 § 32)

[5671—]33. **Partial invalidity of act**—In case any section or sections or parts of any sections of this act shall be found to be unconstitutional, the remainder of the act shall not thereby be invalidated, but shall remain in full force and effect. ('17 c. 442 § 33)

[5671—]34. **Joint action with other states for construction of drainage ditch, etc.—Proceedings**—Whenever it is necessary to construct, widen, deepen, straighten, or change any drainage ditch or water course lying on, along or near the state line between this state and any adjoining state or country, or whenever it is necessary to repair or improve any drainage work provided for in this act, which drainage ditch, water course or other drainage work, cannot be constructed, repaired, or improved in the best manner without extending the same into an adjoining state or country, and thereby affecting lands therein, the county board of the proper county or the judge of the proper district court before whom such ditch proceeding is pending in a county or counties adjoining or near such state line, shall have power to join with the board or tribunal of such adjoining state or country having power to lay out and construct public drainage ditches in such adjoining county or district of another state or country, in the construction, widening, deepening, straightening, repairing or improving of any such drainage ditch, water course or other work of drainage. Such board or tribunal in this state shall have the power to enter into joint contracts or arrangements with such board or tribunal in such adjoining state or country and construct, repair or improve any such drainage work, each to pay such share of the costs and expenses of such work as shall be agreed upon by the contracting bodies. Such work of drainage and the construction thereof, so far as it relates to lands in this state, shall be done on petition of owners of lands as provided for in the drainage laws of this state relating to county or judicial ditch proceedings, and the provisions of such laws so far as applicable shall govern such county board or district judge, as the case may be, in relation to such joint work of drainage. Provided such adjoining county or district in another state or country shall pay its proper share of the necessary costs and expenses of the construction of any such ditch or work including damages. In case the benefits to lands in such adjoining state or country are not sufficient to pay all costs of construction, repair or improvement of such ditch therein, including damages to lands therein, such board or judge, as the case may be, is hereby given the power to contribute sufficient funds to complete the construction, repair or improvement of such ditch in such adjoining state or country, if the same will be of

sufficient benefit to the lands in this state affected by such drainage work, to warrant such contribution. ('15 c. 268 § 1)

See §§ [5671—]1 to [5671—]33.

CURATIVE AND MISCELLANEOUS PROVISIONS

5672. Extension of ditches in certain cases—Second assessment—Proceedings—Certain payments confirmed—Whenever there has heretofore been filed with the county auditor or clerk of court, as the case may be, a petition and bond for the establishment of a public drainage ditch and where the requirements of the drainage laws of this state with reference to the establishment and construction of drainage ditches have been complied with and a ditch has been established by the court or county board in accordance with said petition and the assessments for damages and benefits to the land affected have been made and confirmed or where in addition to the foregoing said ditch has actually been constructed, on the assumption that such ditch should end at the terminus or outlet named in the petition, or in the order establishing the same, and where it is found that in order to make such ditch effectual to drain the land sought to be drained thereby or where it is found that such ditch, as constructed, was not constructed to a proper and adequate outlet, or that such ditch carries and deposits water upon lands lying at, near or below the terminus thereof, without providing adequate facilities for its escape therefrom and where no damage or adequate damages have been awarded on account thereof and it will be necessary to extend such ditch beyond the outlet named in the petition and the order establishing the same to a point beyond such designated outlet which may be within or outside the boundary of such county and state, then the court or county board, as the case may be, may employ an engineer and appoint viewers and proceed to ascertain the cost of the extension of such ditch to the point, of outlet necessary to make said ditch effectual to drain the lands sought to be drained, and to extend such ditch so as to provide a proper and adequate outlet thereto and prevent the water carried therein from being deposited on lands lying at, near or below the terminus of said ditch, as fixed in the petition or order establishing the same without having adequate facilities for the escape therefrom, and when such cost is so ascertained said court or board may make a second assessment to cover such cost on the same lands and in the same proportion as the first assessment for such ditch or such equitable assessment upon lands affected thereby as may under all of the circumstances be just and proper and the moneys arising from said second assessment shall be used exclusively to defray the expenses of such extension to such new outlet. The proceedings herein provided for may be initiated by petition signed by one or more land owners whose lands were affected by said original ditch or whose lands are liable to be affected by or assessed for the extension. In the doing of such work by said court or board it shall be governed by all the provisions, so far as applicable, of section 5552 of the General Statutes of Minnesota for the year 1913, as amended by section 300 of the General Laws of Minnesota for 1915 and other provisions of law applicable thereto.

Any employment of an assistant or consulting engineer to assist the drainage engineer in any ditch proceeding and any payment heretofore made to such assistant or consulting engineer by the county board or on the order of any district judge are hereby legalized and confirmed. (Amended '17 c. 441 § 18)

5672-A. Vacating final order as to assessments in certain cases—New order—Notice and hearing, etc.—Whenever any ditch or drain has been or shall be ordered by the county board of any county or the district court and thereafter it shall appear that the amount of the assessment of benefits made in the final order of such board or court shall be insufficient to cover the cost of the construction of such ditch or drain and the damages allowed and the other outlay made necessary thereby, but where the costs, damages and outlay are less than the amount originally found by the viewers as benefits, then on petition to such board or court by anyone interested, to have the former

final order vacated as to all assessments of benefits and allowances of damages and a new final order as to such benefits and damages made and entered, such board or court shall make an order directing that such petition be heard at a time and place therein specified. The same notice shall be given as was required to be given upon the final hearing in the proceeding in which said final order was made, excepting that the notice shall also specify that the former final order as to all assessments and damages may be vacated upon such hearing. Upon such hearing the board or court shall hear and consider the matter as to assessments of benefits and damages de novo and may make reference to the same or other viewers and may make such new order as to benefits and damages as shall be proper, with the right of appeal and demand of jury trial as in other cases of final order in such proceedings determining assessments of benefits or damages. Such new order shall have the effect to vacate any appeals or demands for jury trials, taken from such former final order. The board or court may in its discretion allow appellant in any appeal or demandant for a jury trial under the former final order, such sum if any as may be just to compensate for expenses incurred subsequent to the taking of such appeal or making of such demand, and such allowance shall be made in the new final order, but the allowances made to appellants or demandants from the former final order who shall appeal or demand jury trial under the new final order shall become void upon the making of a new appeal or new demand. Provided that in the event more than nine months have elapsed since the order establishing any ditch was made and the contract for the construction thereof has not been let, then upon the written application of not less than seventy-five per cent of the then owners of lands assessed for benefits for the construction of such ditch under this law, such ditch may be vacated by the county board or court on payment by such applicants of all costs and expenses, and thereupon any such ditch proceeding shall be dismissed. ('17 c. 441 § 19)

1917 c. 441 § 19 amends this chapter by adding a section to be known as § 5672-A.

5703-A. Bridges across ditches along lines between towns or counties—Cost how paid—That in all cases where a public drainage ditch has been, or shall hereafter be constructed wholly or partly along a boundary line between towns or counties and the excavated material, or a portion thereof, has been, or shall hereafter be deposited on the said boundary line or within two rods on either side thereof, the cost of construction and maintenance of all bridges heretofore or hereafter constructed across any such ditch, along said boundary line shall be paid for and borne equally by the town and county wherein said bridges are or shall be constructed and the town and county adjoining said boundary line. ('17 c. 441 § 20)

1917 c. 441 § 20 amends this chapter by adding a section to be known as § 5703-A. See § [5703—]2.

[5703—]1. Proceedings commenced prior to Laws 1917 c. 441 to be completed under then existing law—In all cases where a petition has been filed and proceedings have been instituted thereunder for the establishment of any drainage improvement under any drainage law of this state prior to the passage of this act, said proceedings may be completed under the provisions of law existing prior to the passage of this act, and the provisions of such law shall continue for all purposes of completing such unfinished proceedings notwithstanding the amendments provided for in this act. ('17 c. 441 § 21)

See §§ 5481-A, 5481-B, 5523, 5525-5527, 5530, 5534, 5536, 5537, 5541, 5542, 5551, 5552-A, 5552-B, 5571, 5606, 5672, 5672-A, 5703-A.

[5703—]2. Bridges across ditches along town lines—Cost, how paid—That in all cases in this state where a public drainage ditch has been or shall hereafter be constructed wholly or partly along a boundary line between towns and the excavated material or a portion thereof has been or shall hereafter be deposited on the said boundary line or within two rods on either side thereof, the cost of construction and maintenance of all bridges heretofore or hereafter constructed across any such ditch along said boundary line shall be paid for and borne equally by the town wherein said bridges are or shall be

constructed and situated, and the town adjoining said boundary line. ('15 c. 252 § 1)

See § 5703-A.

[5703—]3. **Bridges across certain state ditches on town roads—Cost, how paid**—Whenever the State Drainage Commission shall have heretofore constructed, or partly constructed, an outlet for a state ditch under the provisions of chapter 138 of the General Laws of Minnesota for 1911, and which state ditch was constructed under the provisions of chapter 221 of the General Laws of Minnesota for 1893, which outlet has been constructed across a town road at a point other than where the channel of a stream or river which has been widened and straightened and used for such outlet, crosses such town road, the county board of a county in which such outlet has been so constructed, is hereby authorized, empowered and directed to construct a substantial bridge suitable for public travel across such outlet ditch on such town road, at the place where such outlet ditch is constructed across such town road, and such bridge shall be paid for out of the road and bridge fund of such county. ('15 c. 100 § 1)

[5703—]4. **Lands suitable for irrigation—Constructing dams and dikes across public ditch, etc.**—The owner of any land in this state which is suitable for the culture of wire grass, cranberries, rice or other crops requiring irrigation, may upon being licensed as hereinafter provided, construct upon the lands so owned, and across or upon that portion of any public ditch, drain or water course situated within the boundaries of said land, such dams, dykes or other regulating or controlling works, as may be necessary to secure the use of the water for irrigation. Provided that any dam so constructed shall contain properly constructed gates of sufficient size to carry off the flood water above high water mark within twenty-four hours. ('15 c. 189 § 1)

Section 7 repeals conflicting acts, etc.

[5703—]5. **Same—State drainage engineer to issue license**—Any owner desiring to avail himself of the provisions of this act, shall apply for license so to do, to the state drainage engineer of the State of Minnesota, who shall issue a license to the applicant for the same, under such rules and regulations and guarantees as said engineer may require. ('15 c. 189 § 2)

[5703—]6. **Same—Bond**—Before any license is granted, said licensee shall execute a bond to the State of Minnesota, for the use of all persons who may be injured by said construction, conditioned for the payment of all damages to persons or property by reason of the construction of said dams, dykes or the use of said water. ('15 c. 189 § 3)

[5703—]7. **Same—Supervision of engineer**—All dams, dykes or other works or structures constructed or erected under the provisions of this act shall be under the supervision and direction of said engineer. ('15 c. 189 § 4)

[5703—]8. **Same—Not to interfere with public ditches**—Nothing in this act shall be construed as authorizing any act interfering with the benefit and utility of any public ditch, drain or water course, nor to in any manner authorize the use of the water to the damage or injury of the land of any other person, and if at any time it appears that the structures herein authorized cannot be maintained without impairing the utility of a public drain or water course, nor without depriving other land owners of the benefit thereof, then and in that case such license shall, upon demand of the owner or owners of such other land, be immediately revoked. ('15 c. 189 § 5)

[5703—]9. **Same—Penalty for violation**—Any person violating any of the sections of this act shall be guilty of a misdemeanor. ('15 c. 189 § 6)

[5703—]10. **Reassessment of benefits and damages where meandered lake has been drained**—That whenever any public ditch has been established under the provisions of Chapter 230, General Laws of Minnesota for the year 1905, as amended, which ditch has drained any meandered lake, and where damages and benefits have been assessed to abutting landowners on the basis of added lands to said abutting landowners, resulting from the drainage of said lake; and where thereafter by judgment of a competent court, it shall

be adjudged that the said landowner or landowners own a portion of said meandered lake bed not agreeing in number of acres with the number of acres forming the basis for the assessment of benefits and damages in the ditch proceeding, the said landowners, or any of them, may petition the county board establishing such county ditch, or the judge of the district court establishing said judicial ditch, for a re-assessment of the benefits and damages to such land.

Such petition shall be in writing, signed by the party making the same, or his attorney, and filed with the county auditor in case of a county ditch, and with the clerk of the district court in case of a judicial ditch. ('15 c. 262 § 1)

[5703—]11. Same—Hearing and notice—Upon the filing of such petition, the chairman of the county board in the case of a county ditch, or the judge of the district court in the case of a judicial ditch, shall fix a time and place for hearing thereof, and the county auditor or the clerk of the district court, as the case may be, shall cause notice of the filing of such petition, and of the time and place of hearing on the same, to be served on all the owners of any part of the lake bed of said meandered lake, which service of said notice shall be in the same manner as provided for the service of summons in district court, including the service by publication, or personally or persons outside of the state as provided for service of district court summons. ('15 c. 262 § 2)

[5703—]12. Same—Resolution or order of reassessment, etc.—At the time and place of the hearing on said petition, the said county board or judge of the district court, as the case may be, shall hear all persons proper to be heard in said matter, and consider and determine said petition agreeable to the facts in such case; and shall make a resolution or order, and file the same in the proper office, correcting and re-assessing the benefits and damages as the facts and justice in the case warrant. The county auditor shall immediately correct his lien statements in such proceedings to conform with said resolution or order. In case of a judicial ditch, the clerk of the district court, immediately upon the filing in his office, of the order of the judge of the district court correcting such assessment, shall make and file with the county auditor a certified copy of said order. ('15 c. 262 § 3)

[5703—]13. Same—Application, when—Any person or persons desiring or demanding a re-assessment of damages or benefits as herein provided, shall file his application therefor within ninety days after the passage of this act. ('15 c. 262 § 4)

[5703—]14. Bonds for expenses in construction of ditches under laws 1907 c. 248—Where the county board of any county of this state, or the judge of any of the district courts of this state, in pursuance of Chapter 448, General Laws 1907, have located and established, or attempted to locate and establish any ditch, drain or other water course wholly within any county of this state, or partly within one or more counties thereof, and it has been determined by resolution adopted by said board or order made by said judge, that such ditch, drain or water course will be of public utility and promotive of or be conducive to the public health, and that the benefits or estimated benefits to be derived from the construction thereof are greater than the total cost including the damages awarded, and such ditch, drain or water course has been actually constructed, or the county has entered into a contract or contracts for the construction thereof, the county board of any such county is authorized to issue, negotiate and sell the bonds of such county in the manner, to the amount and for the purposes specified in Section 18 of said Chapter 448, General Laws 1907, notwithstanding the repeal of said Chapter 448 and notwithstanding any defects or irregularities in the proceedings for the establishment or construction of said ditch, and any bonds hereafter issued in connection with any ditch so established, authorized or constructed, are hereby declared to be legal and binding obligations of the county issuing the same. ('15 c. 274 § 1)

[5703—]15. Payment of drainage contracts in certain cases authorized—In any case in which a contract has heretofore been let for the construction of a drainage ditch in a judicial ditch proceeding in which the entire ditch to

be constructed is an open ditch and in which the cost of construction as provided in the contract exceeds three hundred thousand dollars and the excavation work thereof is forty per cent or more completed and the contract of construction is not in default, upon the written application of the contractor and the consent of the surety on the bond endorsed thereon first filed in the office of the county auditor, the engineer may issue the usual preliminary certificate or certificates and recommend for payment and the auditor shall cause to be paid to the contractor from the twenty-five per cent reserved from all previous estimates and retained under the contract, an additional amount equal to seventy-five per cent of such reserve, any limitation contained in the general drainage laws of the state to the contrary notwithstanding, and the auditor shall forthwith issue to the contractor his warrant for such amount to be so paid by the county, which warrant shall be payable in the usual course provided for the payment of other warrants issued in part payment of such contract. ('17 c. 171 § 1)

[5703—]16. Payment for extra work in construction of ditches under Laws 1905 c. 230 in certain counties—Where the county board of any county of this state, having not less than fifty (50), nor more than sixty (60) congressional townships, in pursuance of chapter 230 of the Laws of 1905, and the acts amendatory thereof or supplemental thereto, has heretofore located and established any ditch and let a contract for the construction thereof and said contract has been completed and the engineer in charge of said work, during the progress of said work, has changed and modified his reports, plans and specifications in order to make said ditch feasible for the purpose intended and where such changes and modifications were necessary to make said ditch feasible for the purpose intended and such changes and modifications increased the total amount of work done so that if the whole thereof had been paid for at the rates specified in said contract the total cost of constructing said ditch would increase the total cost by more than ten (10%) per centum of the original contract price for the construction thereof, and the engineer has filed his final estimate showing the amount of work actually done and the county has allowed and paid to said contractor for said extras an amount equal to ten (10%) per centum of the original contract price, the county board of any such county may, within six months after the passage of this act, allow and order paid, on application by the contractor therefor, pay to the contractor from any fund of said county applicable to such purpose an amount in addition to the amount already paid said contractor for constructing said ditch as will cause said contractor to receive pay for all extras performed as ordered by said engineer at the unit prices therefor specified in said contract. On passage of a resolution by the county board of any such county ordering such payment, the county auditor of such county shall draw his warrant on the county treasurer of such county payable out of any fund applicable to such purpose or out of any fund designated by the county board, payable to any such contractor for the amount so allowed by any county board. ('17 c. 269 § 1)

[5703—]17. Same—Duties of auditor—Assessment—Liens—As soon thereafter as practicable the auditor of any such county shall make in tabulated form a list and statement in accordance with section 19, chapter 230 of the Laws of 1905 [5443] for the amount so paid to such contractor, assessing such amount to the respective pieces or parcels of land included in the original assessment for such ditch and apportioning the same according to benefits, providing that the amount so charged to any piece or parcel of land when added to the original assessment therefor shall not exceed the amount of benefits accruing to said land as shown by the viewer's report, as the same has been adopted and confirmed by the county board, for the construction of said ditch. Said list and statement shall then be filed in the office of the register of deeds, in accordance with the provisions of said chapter 230 of the Laws of 1905, and the respective amounts chargeable to each piece or parcel of land shall be a lien upon said land, in accordance with said chapter 230 of the Laws of 1905 and the same shall be collected as therein provided. ('17 c. 269 § 2)

[5703—]18. **Same—Pending actions**—This act shall not apply to or affect the right of appeal from such proceedings as now provided by law, or any actions or appeals now pending in which the validity of any of the proceedings relative to such ditch is called in question. ('17 c. 269 § 3)

[5703—]19. **Laws 1905 c. 230, as amended—Proceedings legalized**—Where the county board of any county of this state, or the judge of any of the district courts of this state, in pursuance of Chapter 230 of the Laws of 1905 and the acts amendatory thereof or supplemental thereto, has located and established or attempted to locate and establish any ditch, drain, or water course wholly within any county of this state, or partly within two or more counties thereof, and it has been determined by resolution adopted by said board or order made by said judge, that such ditch, drain or water course will be of public utility and promotive of or be conducive to the public health, and that the benefits or estimated benefits to be derived from the construction thereof are greater than the total cost, including damages awarded, and such ditch, drain or water course has been actually constructed, in accordance with the plans and specifications filed by the engineer therein, or of the contract made in accordance with such plans and specifications, or the county has entered into a contract or contracts for the construction thereof, and the county auditor has, or the county auditors, as the case may be, or any of them, have executed and filed in the office of the register of deeds the tabular statement provided for in said act, making assessments for the cost of the location, establishment and construction of the same within such county against the lands, corporations and roads benefited thereby, and the time for appeals has expired and no appeals have been taken therefrom or from any such proceedings, or if such appeals have been taken that the same have been determined before the passage of this act, then the said proceedings and all assessments or liens so levied or attempted to be assessed or levied for the actual cost of such work, including damages awarded, are hereby legalized and declared to be valid and in full force and effect until paid, in the time and manner set forth in said act and amendments thereto. ('15 c. 6 § 1)

[5703—]20. **Same—Rights, not affected**—This act shall not apply to or affect the right of appeal from such proceedings, as now provided by law, or any actions or appeals now pending in which the validity of said proceedings is called in question. ('15 c. 6 § 2)

[5703—]21. **Laws 1905 c. 230, as amended—Scope of act**—Where a public drainage ditch has been duly established in pursuance of Chapter 230, General Laws of Minnesota, 1905, and act or acts amendatory thereof or supplementary thereto, and first; where such ditch runs into two or more counties of this state, and second; where the total estimated cost of said ditch as shown by the engineer's original estimate of cost exceeds the sum of five hundred thousand dollars, and third; where, in the course of construction of the said public drainage ditch, it has been found, or shall hereafter be found or considered necessary by the engineer in charge thereof to construct bridges over the said ditch or install culverts therein, the cost of which exceeds by more than ten per cent the amount estimated as the cost thereof and set forth as such in the preliminary estimate of cost duly filed by the said engineer, the fourth; where in the course of the construction of such public drainage ditch, it has been found or shall hereafter be found or considered necessary by the engineer in charge thereof to construct and improve roads along the course of said drainage ditch by levelling the waste bank thereof, the cost of which exceeds by more than ten per cent the amount estimated as such cost and set forth as such in the preliminary estimate of cost duly filed by the said engineer, and fifth; where a general contract of construction and excavation of such drainage ditch has been entered into and such excavation contract has been wholly or substantially completed, and said engineer now has so certified or shall hereafter so certify, and where the said engineer has heretofore found or shall hereafter find it necessary to cause the construction of additional branch and lateral ditches to drain lands originally assessed for benefits in such drainage proceedings, which said additional branch and lateral ditches or

any of them were not constructed pursuant to the general construction contract or by the general construction contractor, and sixth; where the said engineer has made and filed or shall hereafter make and file in the office where such original preliminary estimate was filed a supplemental estimate certified by him setting forth the total cost of all bridges and culverts and roads or road improvements already constructed or installed in the said ditch matter, an estimate by said engineer of the proposed cost of construction and installation of all bridges, culverts, roads or road improvements and the location of each thereof, not yet constructed but considered necessary by the said engineer, and an estimate by said engineer of the reasonable or proposed cost per cubic yard of excavation of all such additional branch or lateral ditches already constructed or hereafter to be constructed and certified as necessary by said engineer as hereinbefore provided, the location thereof, the size and dimensions thereof, the amount of yardage of excavation in each one hundred foot station thereof, and the proposed cost of levelling the waste bank thereof, and seventh; where the total cost of construction of such public drainage ditch, including such additional cost of bridges, culverts and roads already built, installed or constructed, and including the additional cost of such bridges, culverts and roads deemed by the said engineer necessary to be hereafter built, installed and constructed, and the additional cost of such additional branch or lateral ditches does not exceed the total amount of assessment of benefits as returned by the viewers in said ditch matter and as fixed or approved by the judge of the District Court, and eighth; where the said engineer in charge of said public drainage ditch has made or shall hereafter make his certificate certifying that the foregoing facts exist and that the foregoing requirements have been complied with, and files such certificate in the office where such original preliminary estimate was filed. ('15 c. 42 § 1)

[5703—]22. Same—Proceedings legalized—Payments to be made—Order of district court for hearing—Then and in the foregoing cases, first; all work of construction of bridges and culverts and all road improvement and road construction heretofore made, the cost whereof is in excess of the respective amount of the estimated cost thereof as shown in such original engineer's estimate of cost duly filed, and all contracts or agreements, however made, of construction or installation of the said roads, bridges or culverts are hereby legalized and validated to the same extent as if such excess of expenditures had been within the amount of such respective items of cost shown as such in said original preliminary estimate, and to the same extent as if all said contracts or agreements of construction or installation had been for amounts within such original preliminary estimate, and second; all items of such cost of construction or installation and all cost of construction of such additional branch or lateral ditches, already incurred, but not yet paid, shall be paid by the respective counties in a like manner and with like effect as if such contract or contracts were for bridges, culverts, roads or ditches authorized to be constructed or installed pursuant to the said original engineer's estimate, and third; the clerk of the district court where such supplemental estimate and such engineer's certificate have been filed as aforesaid shall forthwith notify the judge of the District Court of the said county of the fact of such filing, and such judge shall thereupon by order fix a time and place for a hearing thereon before the said court to determine the necessity of such additional branch or lateral ditches and such additional bridges, culverts and roads, already constructed or yet to be constructed, and to determine the reasonable cost thereof and of each of the same, and to determine and decide all other necessary matters in relation thereto within the purview of this act and to change, alter, modify or enlarge the work proposed to be done as said court may deem advisable. ('15 c. 42 § 2)

[5703—]23. Same—Notice of hearing—Determination and decree—Further proceedings—It shall thereupon be the duty of the clerk of said district court to give notice of hearing pursuant to the said order by publication of the said order of the said district judge in a legal newspaper in each county affected by the said drainage proceedings for two successive weeks prior to

the date of said hearing. At the time and place fixed for such hearing, the said judge of the district court shall receive evidence of all parties interested in said drainage matter, and from the said engineer, and shall proceed to determine the necessity of such additional branch or lateral ditches, bridges, culverts and road or highway improvements, whether heretofore constructed or hereafter to be constructed, and to determine the reasonable cost thereof and of each of the same, whether done or performed pursuant to contract of construction, or otherwise, and to determine all other necessary matters in relation thereto within the purview of this act, and if the said judge from the evidence shall determine that such additional branch or lateral ditches, bridges, culverts and road improvements or any or either of the same are or will be of public utility, and that the proposed respective cost thereof is reasonable and that the requirements of this act have been complied with, and that the facts required by this act exist said judge shall thereupon decree the necessity of said respective additional branch or lateral ditches, bridges, culverts and road improvements, and shall approve such supplementary estimate of said engineer, as filed or as modified by said judge at said hearing. The reasonable cost of all such additional branch or lateral ditches, bridges, culverts, and road improvements already constructed or installed, and decreed as necessary by said judge, shall be found and determined and fixed as a lawful charge or expense in said drainage proceeding. Such additional branch or lateral ditches, bridges, culverts and roads not yet constructed or installed and so decreed necessary shall be established, constructed and installed. Contract or contracts therefor or for any of said additional work or material of installation, construction or excavation shall be let and entered into in like manner and upon like notice as is provided by law in case of an original contract of construction in such drainage matter, provided no contract shall be entered into involving a price for such additional work or material which exceeds by thirty per cent such respective proposed estimate of cost thereof as set forth and approved in such supplemental estimate, and all the laws of this state relating to the letting of contracts in case of judicial ditch matters and to contractors' bonds and to completing said contracts and making payment thereof and accepting same and the work or material thereunder shall apply to such contracts for such additional work or material the same as if said last mentioned contract or contracts were the original contract of construction. Such additional cost shall become a part of the expense of construction of said ditch, and such additional cost to be so incurred, together with the cost of the said bridges, roads and culverts already constructed in excess of such original estimate, together with all other items of cost or expense of said ditch, however incurred, when approved by said judge, and found or determined by said decree to be necessary and reasonable in cost, shall be included in a supplementary lien statement to be made and filed by the county auditor and recorded in the office of the register of deeds in like manner as in case of the original lien of benefits, and said supplementary lien, when so filed and recorded, shall constitute a valid lien against all lands described therein with like effect as in case of the original lien statement in such drainage proceedings, and the assessment of benefits against the lands described therein shall be collected by the respective county officers as in case of other supplementary liens under the drainage laws of this state. ('15 c. 42 § 3)

[5703—]24. **Same—Appeal**—Any party interested in said drainage matter may appeal from said order and decree herein provided for in like manner as in case of appeals from or review of the final order establishing a judicial ditch, and all the laws of this state appertaining to an appeal from or review of a final order establishing a judicial ditch shall apply to an appeal from the order herein provided for. ('15 c. 42 § 4)

[5703—]25. **Same—Pending actions**—This act shall not be construed to apply to any action or proceeding now pending in any of the courts of this state affecting the validity of any of the foregoing items of cost of construction or the payment thereof. ('15 c. 42 § 5)

[5703—]26. Location of certain drainage ditches legalized—Whenever a public drainage ditch has been established in pursuance to the drainage laws of this state and a general contract of construction thereof has been duly entered into, and during the course of construction thereof, the engineer has caused the said ditch or any branch or lateral thereof to be built or constructed at a different point of location or along a different course, or with a different source or outlet than as designated in the original report of the engineer in said ditch matter or as duly established by the judge of the district court or the county board, or where ditches in such system other than or in addition to those duly established have been actually dug and constructed as a part of said drainage system, then and in that case, or either or any of them, such ditch and such branches or laterals thereof, and such additional ditch or ditches so dug and constructed are hereby legalized and made valid at such place of actual construction to the same extent and with like effect as if there established and located and ordered to be constructed by the final order establishing said ditch; provided, that if any person or parties whose lands are affected by any such change of source, course or outlet of any such ditches or by such additional ditches, claim additional damages to such lands than as originally awarded or claim reduction of assessment of benefits thereto then and in any such case such person shall within six months after the passage of this act make application to the district judge or county board which established said ditch to have his claim for such additional damages or reduced benefits considered and determined, and such application shall be heard at a time and place designated by order of the respective district judge or county board which established said ditch. Notice of the time and place of such hearing shall be given in the manner designated in said order, and at such hearing evidence as to such change of assessment of benefits or damages shall be heard and considered and said judge of the district court or county board, as the case may be, shall make such decree or order in reference thereto as is required by said evidence and as may be just and equitable. Appeal or review of such order shall be had in the manner provided by law for appeals from final order establishing a judicial ditch. This act shall only apply to drainage ditches and costs whereof as estimated by the engineer and shown in his report duly filed, exceeds the sum of five hundred thousand (\$500,000.00) dollars. ('15 c. 74 § 1)

[5703—]27. Same—Pending actions—The provisions of this act shall not apply to any action now pending in any of the courts of this state wherein additional damages or reduction of benefits is sought. ('15 c. 74 § 2)

[5703—]28. Laws 1905 c. 230, as amended—Proceedings legalized—Where the county board of any county of this state, or the Judge of any of the District Courts of this State, in pursuance of Chapter 230 of the Laws of 1905 and the acts amendatory thereof or supplemental thereto, has located and established or attempted to locate and establish any ditch, drain, or water course wholly within any county of this state, or partly within two or more counties thereof, and it has been determined by resolution adopted by said board or order made by said Judge, that such ditch, drain or water course will be of public utility and promotive of or be conducive to the public health, and that the benefits or estimated benefits to be derived from the construction thereof are greater than the total cost, including damages awarded, and such ditch, drain or water course has been actually constructed, in accordance with the plans and specifications filed by the Engineer therein, or of the contract made in accordance with such plans and specifications, or the county has entered into a contract or contracts for the construction thereof, and the County Auditor has, or the County Auditors, as the case may be, or any of them, have executed and filed in the office of the Register of Deeds the tabular statement provided for in said Act, making assessments for the cost of the location, establishment and construction of the same within such county against the lands, corporations and roads benefited thereby, and the time for appeals had expired and no appeals have been taken therefrom or from any such proceedings, or if such appeals have been taken that the same have been determined before the passage of this act, then the said proceedings

and all assessments or liens so levied or attempted to be assessed or levied for the actual cost of such work, including damages awarded, are hereby legalized and declared to be valid and in full force and effect until paid, in the time and manner set forth in said Act and amendments thereto. ('15 c. 216 § 1)

[5703—]29. **Same—Pending appeals and actions, etc.**—This act shall not apply to or affect the right of appeal from such proceedings, as now provided by law, or any action or appeals now pending in which the validity of said proceedings is called in question. ('15 c. 216 § 2)

[5703—]30. **Certain proceedings legalized**—Where the judge of any of the district courts of this state in pursuance of the laws governing the establishment and construction of judicial ditches, has established and ordered constructed in parts of two counties a judicial ditch, drain or other water course, and the proceedings for such establishment and construction are in all respects valid and according to law, except that the petition and notices required by law to be published, were in fact published in only one of the said counties through which said ditch was so established, such ditch, drain or water course, and such published notices as aforesaid, and all other proceedings for its establishment and construction are hereby legalized and made valid, and any assessments or liens levied or created against lands benefited by the establishment of said ditch, drain or water course, by the county auditor, county board, or judge of said court, for the costs of the establishment and construction of said ditch, drain or water course, are hereby legalized and declared valid and of full force and effect, and a lien upon and against said lands so benefited by the establishment and construction of such ditch, drain or water course, until paid at the time and in the manner as provided for in the law under which the said ditch drain or water course was established and constructed.

Provided, however, that if any such ditch has been constructed in whole or in part, the same has been so constructed as provided for in the report of the engineer, and in accordance with the contract for the construction thereof. ('15 c. 224 § 1)

[5703—]31. **Same—Pending appeals and actions, etc.**—This act shall not apply to or affect the right of appeal from such proceedings as now provided by law, or any actions or appeals now pending in which the validity of any such proceedings is called in question. ('15 c. 224 § 2)

[5703—]32. **Certain bonds legalized**—In all cases where a county has heretofore issued its bonds for the purpose in whole or in part, of obtaining money to pay for the repairing of any public ditch or ditches, such bonds are hereby legalized and made valid and binding obligations of the county issuing the same. ('17 c. 64 § 1)

[5703—]33. **Same—Pending actions**—This act shall not apply to or affect any action now pending in which the validity of any such bonds is called in question. ('17 c. 64 § 2)

[5703—]34. **Laws 1905 c. 230, as amended—Proceedings and bonds legalized**—Where the county board of any county of this state or the judge of any of the district courts of this state, in pursuance of chapter 230 of the Laws of 1905 and the acts amendatory thereof or supplemental thereto, has located and established or attempted to locate and establish any ditch, drain or water course, wholly within any county of this state or partly within two or more counties thereof, and it has been determined by resolution adopted by said board or order made by said judge that such ditch, drain or water course will be of public utility and promotive of or be conducive to the public health and that the benefits or estimated benefits to be derived from the construction thereof are greater than the total cost, including damages awarded, and such ditch, drain or water course has been actually constructed in accordance with the plans and specifications filed by the engineer therein or of the contract made in accordance with such plans and specifications, or the county has entered into a contract or contracts for the construction thereof and the county

auditor has or the county auditors as the case may be or any of them have executed and filed in the office of the register of deeds the tabular statement provided for in said act, making assessments for the cost of the location, establishment and construction of the same within such county against the lands, corporations and roads benefited thereby and the time for appeals has expired and no appeals have been taken therefrom or from any such proceedings or if such appeals have been taken that the same have been determined before the passage of this act, then the said proceedings and all assessments or liens so levied or attempted to be assessed or levied for the cost of such work, including damages awarded and the bonds of any county heretofore issued in pursuance thereof, are hereby legalized and declared to be valid and in full force and effect. ('17 c. 163 § 1)

[5703—]35. **Same—Pending actions**—This act shall not apply to or affect any actions or appeals now pending in which the validity of such proceedings or such bonds is called in question. ('17 c. 163 § 2)

[5703—]36. **Establishment of county and judicial ditches where order void for lack of jurisdiction, etc.—Procedure—Bonds legalized**—Whenever a petition has heretofore been filed praying for the establishment of a judicial or county ditch or drainage system and the county board or judge of the district court, as the case may be, has made its final order establishing or attempting to establish a public ditch or drainage system in said proceeding and confirming the report of the engineer and viewers and the assessment of benefits and damages, but where the court or the county board has departed from the line of the ditch set forth in such petition and has by its order established such ditch and drainage system in a different basin or partly in a different basin or direction than that prayed for in the petition, or has decreased the amount of the assessment of benefits to less than seventy-five per cent of the amount found by the viewers, and the contract for the building and construction of such ditch has or has not been sold and let and the contractor has or has not proceeded to construct such ditch and has or has not received estimates and payments on account of such work and the bonds of the county covering such ditch have or have not been sold, and it appears that the establishment of such ditch is practicable and of public utility and benefit, but where such order establishing such ditch and drainage system and confirming the report of the viewers and the assessment of benefits and damages is void for any reason, or the total amount of the final assessment of benefits is less than seventy-five per cent of the amount found by the viewers, the judge of the district court in the proper county shall, upon petition of the county attorney of any county in which said ditch or drainage system is partly or wholly located, or upon petition of any other public officer of said county or of any person interested in said ditch and drainage system, petitioning for a judicial ditch following the course of the said ditch and its laterals as described in such order, proceed with the establishment of said ditch and drainage system the same as if the petition therefor were filed by an interested property owner and as if said ditch had not been partially or wholly established and constructed and jurisdiction shall thereupon be acquired of the entire subject matter and said ditch proceeding and shall cause notices of hearing thereon to be given in the same manner as is now provided by law in the establishment and construction of public ditches under chapter 230, General Laws of 1905 and all acts amendatory thereof and supplemental thereto, and shall appoint an engineer and viewers in such proceeding and shall proceed and cause all steps to be taken and acts to be done which are now provided for by said drainage law for the establishment and construction of any public ditch or drainage system from the time of the filing of the petition for such ditch, except that the work of construction need not be resold, if already sold and no new contract or contracts or bonds need be required, if previously made or issued but the contract and bond or contracts and bonds of the contractor shall stand and be valid the same as if said work were resold and said contract and bond or contracts and bonds were entered into therefor, and if the report of such engineer and viewers shows the improvement to be of public utility and benefit and to be practicable

and that the estimated benefits exceed the estimated cost of construction and damages and said estimated benefits shall exceed the cost of the construction and the damages awarded said ditch shall be ordered and said drainage system shall be established by order of court, and said order shall relate back and take effect as of the date of the entry of the aforesaid order attempting to establish such ditch. Thereafter, upon the making of the order establishing such ditch and drainage system and confirming the assessment of benefits and damages, the county auditor, whose duty it is under said drainage law to make and file the lien statement in the case of the construction of public ditches shall prepare and file the lien statement for said improvement and said ditch comprising the cost of the construction of said ditch and the damages awarded, if any, not, however, exceeding the estimated benefits as the same may be confirmed. All provisions of said chapter 230, General Laws of 1905 and acts amendatory thereof and supplemental thereto, including all rights of appeal and review of damages and benefits as provided in section 12 thereof as amended [5534], except where inconsistent herewith, shall be applicable to such proceeding. Any and all bonds sold and issued by the county or any of the counties affected by said ditch upon such order being made establishing such ditch shall be valid and are hereby legalized the same as if they had been sold and issued after the establishment of said ditch as herein provided. ('17 c. 391 § 1)

[5703—]37. **Laws 1905 c. 230, as amended—Proceedings legalized—**Where the county board of any county of this state, or the judge of any of the district courts of this state, in pursuance of chapter 230 of the laws of 1905 and the acts amendatory thereof or supplemental thereto, has located and established or attempted to locate and establish any ditch, drain, or water course wholly within any county of this state, or partly within two or more counties thereof, and it has been determined by resolution adopted by said board or order made by said judge, that such ditch, drain or water course will be of public utility and promotive of or be conducive to the public health, and that the benefits or estimated benefits to be derived from the construction thereof are greater than the total cost, including damages awarded, and such ditch, drain or water course has been actually constructed, in accordance with the plans and specifications filed by the engineer therein, or of the contract made in accordance with such plans and specifications, or the county has entered into a contract or contracts for the construction thereof, and the county auditor has, or the county auditors, as the case may be, or any of them, have executed and filed in the office of the register of deeds the tabular statement provided for in said act, making assessments for the cost of the location, establishment and construction of the same within such county against the lands, corporations and roads benefited thereby, and the time for appeals has expired and no appeals have been taken therefrom or from any such proceedings, or if such appeals have been taken that the same have been determined before the passage of this act, then the said proceedings and all assessments or liens so levied or attempted to be assessed or levied for the actual cost of such work, including damages awarded, are hereby legalized and declared to be valid and in full force and effect until paid, in the time and manner set forth in said act and amendments thereto. ('17 c. 451 § 1)

[5703—]38. **Same—Pending appeals and actions, etc.—**This act shall not apply to or affect the right of appeal from such proceedings, as now provided by law, or any actions or appeals now pending in which the validity of said proceedings is called in question. ('17 c. 451 § 2)

CHAPTER 45

SEALS

5704. Private seals abolished—

Cited (121-301, 141+183, Ann. Cas. 1914C, 755).

CHAPTER 46

NOTARIES PUBLIC

5709. Term—Bond—Oath—

In action on notary's bond for negligence in making certificate of acknowledgment, evidence held to sustain general and special verdicts for defendant (129-221, 152+267). Notaries, ¶11.

CHAPTER 47

RESIGNATIONS—VACANCIES—REMOVALS

5723. Vacancies—

Cited in dissenting opinion (131-401, 155+629).

Laws 1915 c. 168, amending §§ 809, 810, post, by providing that clerks of district court elected in 1912 should hold over until January, 1919, and that their successors should be elected in November, 1918, held to create a vacancy commencing in January, 1917 (132-426, 157+652). Clerks of Courts, ¶7.

Where a successful candidate for the office of county superintendent of schools prevailed on a contest entered by the predecessor in the office, who was a candidate for re-election, on the ground of violation of the corrupt practices act, and the office was surrendered to the contestee, who qualified, but thereafter, on appeal by contestant, the contestee was ousted, and resigned, and the county board appointed respondent to fill the vacancy, such appointment was valid, as there was a vacancy; contestee not holding over under § 810 (131-1, 154+442). Schools and School Districts, ¶48(3).

This provision does not prevent a prior incumbent from holding over, he not having waived or surrendered or abandoned his right; nor does it create a vacancy to be filled by appointment, though the former incumbent has given actual possession to one holding a certificate of election (131-401, 155+629). Judges, ¶9.

5727. Appointment—How long to continue—Impeachment—

Cited (131-401, 155+629).

An appointee to fill a vacancy in the county board, in a county not newly organized, or in which the number of commissioners is not increased, holds only until the next election occurring after there is sufficient time to give the notice prescribed by law, and until a successor is elected and qualified; this section governing, and not § 680 (129-359, 152+758). Counties, ¶43.

CHAPTER 48

OATHS AND ACKNOWLEDGMENTS

ACKNOWLEDGMENTS

5747. Officers and stockholders of corporations—Protest—Any person authorized to take acknowledgments or administer oaths, who is at the same time an officer, director, or stockholder of a corporation, is hereby authorized to take acknowledgments of instruments wherein such corporation is interested, and to administer oaths to any officer, director or stockholder of such corporation as such, and to protest for non-acceptance or non-payment bills of exchange, drafts, checks, notes and other negotiable or non-negotiable instruments which may be owned or held for collection by such corporation, as fully and effectually as if he were not an officer, director or stockholder of such corporation. (Amended '15 c. 20 § 1)

[5754—]1. Acknowledgment before member of legislature—Curative—That all acknowledgments taken by any member of the legislature of this state as a notary public, who at the time of taking such acknowledgment was a member of said state legislature, are hereby legalized and made valid and effectual in all particulars, together with the records thereof where the instrument bearing such acknowledgment has been recorded as provided by law; provided that this act shall not extend to any action or proceeding now pending. ('17 c. 286 § 1)

CHAPTER 49

FEES

5761. [Repealed.]

See § [5761—]2.

[5761—]1. Charges in supreme court—That in lieu of all charges now provided by law as fees of the clerk of the supreme court, there shall be paid by the appellant or moving party or person requiring the service, the following amounts:

In all cases of appeal, certiorari, habeas corpus, mandamus, injunction, prohibition, or other original proceeding, the sum of ten dollars; and

In all special proceedings, applications and motions, other than in causes pending in the court where the filing fee therefor has been paid, the sum of two dollars; and for the issuance of certificates to attorneys at law admitted to practice in this state, the sum of one dollar; and for certified or authenticated copy of any record, proceeding or paper, on file or of record in the office of the clerk, at the rate of ten cents per folio or fraction thereof, and twenty-five cents for each certificate, except where copies are furnished for certification by the person requiring the same, in which case the charge shall be at the rate of two cents per folio for comparing and twenty-five cents for each certificate; and for services required by law or rules of court not herein provided for, such sum as shall be fixed by rule of the court.

The clerk shall not file any paper, issue any writ or certificate, or perform any service enumerated herein, until the payment therefor shall have been made, and when made he shall pay such sum into the state treasury as provided for by General Statutes of Minnesota 1913, section 296.

The charges provided for herein shall not apply to disbarment proceedings, or to actions or proceedings by the state, taken solely in the public interests, where the state is the appellant or moving party, or to copies of the

opinions of the court furnished by the clerk to the parties before judgment. ('15 c. 177 § 1, amended '17 c. 66 § 1)

[5761—]2. Same—Liability of clerk—Repeal—That the clerk of the supreme court shall be held liable or responsible for no other charges except as provided in Section 1 hereof [5761—1], and that Section 5761 General Statutes of Minnesota 1913, is hereby repealed, except as to appeals pending in said court at the time of the taking effect of this act. ('15 c. 177 § 2)

5762. Fees of sheriffs— * * *

25. When mileage is allowed the sheriff it shall be computed from the place where court is usually held, and, except as otherwise specially fixed, shall be at the rate of fifteen cents per mile for the first twenty miles of the total mileage and ten cents a mile thereafter. When two or more witnesses subpoenaed in the same action live in the same general direction, mileage shall be charged only for the subpoenaing of the most remote. When court is usually held at one or more places, other than the county seat of a county, such mileage shall be computed from the place from which the sheriff or deputy sheriff travels in performing any service. (Par. 25, amended '17 c. 363 § 1)

5765. Fees of constables— * * *

2. For a copy of every summons delivered on request or left at the residence of defendant 25 cents.

3. Serving a subpoena or summons 50 cents for each person named therein served. Provided, that any such summons or subpoena, may be served by any person not a party to the action, but if served by any person other than an officer no fees or mileage shall be allowed therefor, and service shall be proved by affidavit. (Subds. 2, 3, amended '17 c. 170 § 1)

5767. Fees of justices of the peace— * * *

6. Entering a judgment \$1.00.

34. For filing every paper requiring to be filed 10 cents. (Subds. 6, 34, amended '17 c. 169 § 1)

5774. Fees of witnesses—

A nonresident witness is entitled to mileage computed by the usually traveled route from his residence to the place of trial, and where there are several usually traveled routes he may select any one of them without respect to its length (133-33, 157+896). Witnesses, ~~§~~ 29.

A party procuring the attendance of a witness at the trial is liable for his per diem and mileage, though he provides him with free transportation, and such fees and mileage may be taxed as costs, with other disbursements (133-33, 157+896). Witnesses, ~~§~~ 30.

5778. Fees of jurors—

Cited on meaning of words "necessarily traveled" as used in § 685 (134-346, 159+791).

5779. Coroner and justice jurors—

See 134-346, 159+791, citing this section on question of meaning of words "necessarily traveled" in § 685.

5781. Fees of court commissioners—

1. For examining any petition, complaint, affidavit, or any paper wherein an order is required, one dollar.

2. For making and entering an order on the same, fifty cents.

3. For examining an alleged insane or inebriate person for commitment, five dollars.

4. For hearing and deciding on the return of a writ of habeas corpus, three dollars for each day necessarily occupied.

5. For examination of judgment debtors in proceedings supplementary to execution and for all disclosures in garnishment proceedings in writing, fifteen cents per folio.

6. For all other services rendered by him, the same fees as are allowed by law to other officers for similar services. (Amended '15 c. 203 § 2)

CHAPTER 50

WEIGHTS AND MEASURES

5799. Penalty for violation—

See note under § 8913, post.

5801. Sealing—

Failure to comply with statute does not prevent introduction of recorded weights in evidence (121-321, 141+298). Weights and Measures, §7.

CHAPTER 51

INTEREST AND NEGOTIABLE INSTRUMENTS

INTEREST

5805. Rate—

Notes given for the price of land located in another state, though executed and delivered in this state, will be presumed to be governed by the law of the state which renders the notes valid as against a claim of usury (128-30, 150+229, L. R. A. 1916D, 739). Usury, §2(1).

Where one makes a loan to another from his own funds, but with a view to sell one of the notes to a third person, and the borrower actually receives less, after computing interest at the highest legal rate, than he agrees to repay, the transaction is usurious (132-323, 156+666). Usury, §55.

Whether a transaction is usurious is usually a question of fact; but where the facts are undisputed, and only one inference can be drawn therefrom, usury becomes a question of law (132-323, 156+666). Usury, §119.

In action for damages for false representations in the sale of a stallion, plaintiff was entitled to interest on the amount paid for the animal as an element of damages (124-265, 144+954). Damages, §157(4).

A building loan is not usurious, though the addition of specified monthly dues to the stipulated rate of interest would call for a total rate of 12 per cent. per annum, where there is a further provision in the loan agreement that the borrower shall participate in the profits of the building association, the amount of which is not shown, and which may be sufficient to reduce the rate actually paid to less than 10 per cent. (132-19, 155+765). Building and Loan Associations, §33(6).

5807. Usurious contracts invalid—Exceptions—

Where a loan is made under an agreement that it shall be governed by the laws of another state, in which state the money is made payable, and under the laws of that state the loan is not usurious, though it would be usurious under the laws of this state, a mortgage given to secure the loan on lands in this state is valid (132-19, 155+765). Usury, §2(4).

Though a note secured by mortgage has passed to a bona fide purchaser of the note free from the defense of usury, the mortgage cannot be enforced (132-323, 156+666). Usury, §128.

Expenses incident to making a loan which do not give the lender a greater return than the maximum rate on interest do not render the loan usurious. A loan for which the borrower paid the maximum rate of interest, and in addition paid the mortgage registry tax, held not usurious (125-218, 146+350, 51 L. R. A. [N. S.] 465, Ann. Cas. 1915C, 774). Usury, §53.

5812. Salary loans and chattel mortgage loans—License—Before any such corporation shall engage in the business of making such loans, and charge the rates and fees permitted by this act, it shall first obtain and have in force and effect a license for carrying on such business in the city in which such business shall be transacted. Such license shall be issued by the city clerk or corresponding officer of such city, and it shall be renewed annually, and shall not be transferable. Such license shall be granted on application to such city clerk or corresponding officer in writing pursuant to such form as such clerk or corresponding officer, or city council, or corresponding body may prescribe, for which license the licensee shall pay annually to the treasurer of said city at the time of taking out said license or renewal a uniform fee of \$25.00 per year. Such licenses shall not be granted until the applicant there-

for shall file a statement under oath by its treasurer or some other officer, stating the place in the city where the business is to be carried on, the names of the corporation's officers and manager, and also an affidavit by its treasurer that in the fiscal year of said corporation next preceding the date of said application, the corporation did not pay its stockholders upon their shares in money or money's worth dividends in excess of eight per cent (8). (Amended '15 c. 117 § 1)

TITLE I—NEGOTIABLE INSTRUMENTS IN GENERAL

ARTICLE I. FORM AND INTERPRETATION

5814. Certainty as to sum—What constitutes—

Cited (133-230, 158+253).

5835. Forged signature—Effect of—

This section protects the party whose signature has been forged or affixed without his authority, but does not release other parties from liability actually assumed by them in signing the note (135-171, 160+667). Bills and Notes, § 378. See, also, note under § 5936.

ARTICLE II. CONSIDERATION

5836. Presumption of consideration—

124-532, 144+1135.

5837. Consideration, what constitutes—

The issuance and delivery of a life policy is a sufficient consideration for a note previously given for the first premium (128-241, 150+870). Insurance, § 187(3).

An indorsee of negotiable paper, taken before maturity as collateral security for an antecedent debt, in good faith and without notice of defenses, holds the same free from such defenses (127-390, 149+658). Bills and Notes, § 358.

Subsequent bankruptcy of a corporation does not establish failure of consideration for a note given for the purchase price of a share of stock (123-208, 143+353, L. R. A. 1915A, 464, Ann. Cas. 1915A, 420). Corporations, § 90(1).

5838. What constitutes holder for value—

Where bank discounts note before maturity, and places proceeds to credit of payee, a depositor, the bank is not a holder for value until the deposit is exhausted by payment of checks, the amount of checks being charged against the oldest item of deposit (122-215, 142+139, Ann. Cas. 1914D, 977). Bills and Notes, § 356, 525, 537.

5840. Effect of want of consideration—

Want of marketable title held a good defense to a note given for the price of land (123-66, 142+1041). Bills and Notes, § 335; Vendor and Purchaser, § 308(1).

Parol evidence held admissible to show that a note was without consideration, and that the proceeds thereof were given to the maker as a gift from his father, the payee (125-115, 145+785). Evidence, § 482.

ARTICLE III. NEGOTIATION

5855. Indorsement where name is misspelled et cetera—

That word of name of corporate payee was omitted from body of note, while indorsement was in correct name, did not affect validity of indorsement (122-215, 142+139, Ann. Cas. 1914D, 977). Bills and Notes, § 271½.

5861. Transfer without indorsement—Effect of—

Delivery of notes to surety on his payment of same (128-519, 151+529). Bills and Notes, § 209, 315.

ARTICLE IV. RIGHTS OF THE HOLDER

5864. What constitutes a holder in due course—

Evidence held to show that plaintiff was not an innocent purchaser of the note sued on (123-374, 143+980). Bills and Notes, § 516.

Whether plaintiff purchased the note sued on before maturity, and paid a specified sum therefor, held, under the evidence, a question for the jury (127-291, 149+467). Bills and Notes, § 537(6).

The transfer of negotiable paper for value and in the usual course of business, as collateral security, vests in the holder a valid title, similar in all respects to that held by an unconditional indorsee (127-113, 143+1080). Pledges, § 21.

Where maker of note did not schedule it in bankruptcy proceeding, and an accommodation indorser was compelled to pay it, the maker, sued by such indorser, was required to show that holder had actual notice of bankruptcy proceeding (162+1076). Bankruptcy, § 425.

In action by receiver of state bank to recover money received by defendant bank on checks of state bank's officer and paid out of state bank's funds when officer's deposit was insufficient, evidence held to show the good faith of defendant in receiving checks and of those participating in their collection (162+1051). Bills and Notes, ¶525.

5868. What constitutes notice of defect—

One claiming to be a holder in due course of corporation notes signed by its president alone is charged with notice of a by-law of the corporation requiring that notes shall be signed by the president and secretary, where such by-law was enacted in accordance with the requirement of § 6172, post (134-445, 153+1078). Corporations, ¶429.

Payment by bank of draft payable to bank, and in hands of stranger thereto (127-105, 149+8, L. R. A. 1915B, 287). Banks and Banking, ¶138.

Personal check of a bank officer drawn upon the bank and accepted in payment of his note does not charge holder with notice that there is an attempt to misappropriate bank's funds (162+1051). Banks and Banking, ¶112.

5871. Who deemed holder in due course—

Where bank discounted note before maturity, and placed proceeds to credit of payee, a depositor, and defendant pleaded breach of warranty of automobile, for the price of which note was given, the burden of proving that plaintiff bank was not a holder in due course was on defendant (122-215, 142+139, Ann. Cas. 1914D, 977). Bills and Notes, ¶497(2).

If a defense of fraud in procuring a note is established by the evidence, it is the duty of the court to instruct that plaintiff, a transferee of the note, has the burden of proving that he was a bona fide purchaser (127-291, 149+467). Bills and Notes, ¶491.

ARTICLE VI. PRESENTMENT FOR PAYMENT

5882. Effect of want of demand on principal debtor—

When a note is payable on demand after date, suit may be maintained, though a demand has not been made (161+398). Bills and Notes, ¶395.

5894. When presentment may be dispensed with—

Cited (161+398).

5897. Time of maturity—Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due or becoming payable on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday; and if presented after 12 o'clock noon on Saturday when that entire day is not a holiday may at the option of the payor be then paid. (Amended '17 c. 204 § 1)

ARTICLE VIII. DISCHARGE OF NEGOTIABLE INSTRUMENTS

5932. When persons secondarily liable on, discharged—

A promise to pay a past-due debt is not such a consideration for an extension of time of payment, as will release a surety (124-541, 145+164). Principal and Surety, ¶108(2).

5936. Alteration of instrument—Effect of—

Where Knox and Burchard executed a note payable to the order of "ourselves," by signing their individual names upon the face of the note and indorsing their individual names on the back thereof, and the note was subsequently altered so that it purported to be executed by the Knox-Burchard Mercantile Company, and to be indorsed by that company and by Knox, Burchard, and others individually, and thereafter the note was negotiated to plaintiff, a holder in due course, Burchard is liable on the note according to its original tenor, in view of this section, which applies to the situation, and not § 5835 (135-171, 160+667). Bills and Notes, ¶378.

5937. What constitutes a material alteration—

The act of a third person in signing a note as surety before delivery to the payee, without the knowledge of the maker, does not discharge the maker; the alteration not being a material one (128-519, 151+529). Alteration of Instruments, ¶8.

MISCELLANEOUS PROVISIONS

6015. Instrument obtained by fraud—

Evidence held to show that a note was procured by fraud (123-374, 143+980). Bills and Notes, ¶520.

Evidence held to justify a finding of the jury that defendant was induced to sign a note by fraud in the belief that it was not a note (126-42, 147+823). Bills and Notes, ¶520.

[CHAPTER 51A]

[SALE OF GOODS]

PART I—FORMATION OF THE CONTRACT

[6015—]1. **Contracts to sell and sales**—(1) A contract to sell goods is a contract whereby the seller agrees to transfer the property in goods to the buyer for a consideration called the price.

(2) A sale of goods is an agreement whereby the seller transfers the property in goods to the buyer for a consideration called the price.

(3) A contract to sell or a sale may be absolute or conditional.

(4) There may be a contract to sell or a sale between one part owner and another. ('17 c. 465 § 1)

"An act to make uniform the law of sales of goods." The act enacts the so-called "Uniform Sales Act" recommended to the legislatures by the National Conference of Commissioners on Uniform State Laws and now in force in many states. Section 4 [6015—4] departs from the Uniform Act in one particular.

[6015—]2. **Capacity—Liabilities for necessities**—Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property.

Where necessities are sold and delivered to an infant, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

Necessaries in this section mean goods suitable to the condition in life of such infant or other person, and to his actual requirements at the time of delivery. ('17 c. 465 § 2)

FORMALITIES OF THE CONTRACT

[6015—]3. **Form of contract or sale**—Subject to the provisions of this act and of any statute in that behalf, a contract to sell or a sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be inferred from the conduct of the parties. ('17 c. 465 § 3)

[6015—]4. **Statute of frauds**—(1) A contract to sell or a sale of any goods or choses in action of the value of fifty dollars or upwards shall not be enforceable by action unless the buyer shall accept part of the goods or choses in action so contracted to be sold or sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract or sale be signed by the party to be charged or his agent in that behalf.

(2) The provisions of this section apply to every such contract or sale, notwithstanding that the goods may be intended to be delivered at some future time or may not at the time of such contract or sale be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery; but if the goods are to be manufactured by the seller especially for the buyer and are not suitable for sale to others in the ordinary course of the seller's business, the provisions of this section shall not apply.

(3) There is an acceptance of goods within the meaning of this section when the buyer, either before or after delivery of the goods, expresses by words or conduct his assent to becoming the owner of those specific goods. ('17 c. 465 § 4)

This section departs from the Uniform Act by substituting fifty for five hundred. It takes the place of §§ 6999, 7000.

SUBJECT MATTER OF CONTRACT

[6015—]5. **Existing and future goods**—(1) The goods which form the subject of a contract to sell may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract to sell, in this act called "future goods."

(2) There may be a contract to sell goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3) Where the parties purport to effect a present sale of future goods, the agreement operates as a contract to sell the goods. ('17 c. 465 § 5)

[6015—]6. **Undivided shares**—(1) There may be a contract to sell or a sale of an undivided share of goods. If the parties intend to effect a present sale, the buyer, by force of the agreement, becomes an owner in common with the owner or owners of the remaining shares.

(2) In the case of fungible goods, there may be a sale of an undivided share of a specific mass, though the seller purports to sell and the buyer to buy a definite number, weight or measure of the goods in the mass, and though the number, weight or measure of the goods in the mass is undetermined. By such a sale the buyer becomes owner in common of such a share of the mass as the number, weight or measure bought bears to the number, weight or measure of the mass. If the mass contains less than the number, weight or measure bought the buyer becomes the owner of the whole mass and the seller is bound to make good the deficiency from similar goods unless a contrary intent appears. ('17 c. 465 § 6)

[6015—]7. **Destruction of goods sold**—(1) Where the parties purport to sell specific goods and the goods without the knowledge of the seller have wholly perished at the time when the agreement is made, the agreement is void.

(2) Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have perished in part or have wholly or in a material part so deteriorated in quality as to be substantially changed in character, the buyer may at his option treat the sale:

(a) As avoided, or

(b) As transferring the property in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the sale was indivisible, or to pay the agreed price for the goods in which the property passes if the sale was divisible. ('17 c. 465 § 7)

[6015—]8. **Destruction of goods contracted to be sold**—(1) Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault on the part of the seller or the buyer, the goods wholly perish, the contract is thereby avoided.

(2) Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault of the seller or the buyer, part of the goods perish or the whole or a material part of the goods so deteriorate in quality as to be substantially changed in character, the buyer may at his option treat the contract:

(a) As avoided, or

(b) As binding the seller to transfer the property in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the contract was indivisible, or to pay the agreed price for so much of the goods as the seller, by the buyer's option, is bound to transfer if the contract was divisible. ('17 c. 465 § 8)

THE PRICE

[6015—]9. **Definition and ascertainment of price**—(1) The price may be fixed by the contract, or may be left to be fixed in such manner as may be agreed, or it may be determined by the course of dealing between the parties.

(2) The price may be made payable in any personal property.

(3) Where transferring or promising to transfer any interest in real estate constitutes the whole or part of the consideration for transferring or for promising to transfer the property in goods, this act shall not apply.

(4) Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case. ('17 c. 465 § 9)

[6015—]10. **Sale at a valuation**—(1) Where there is a contract to sell or a sale of goods at a price or on terms to be fixed by a third person, and such third person without fault of the seller or the buyer, cannot or does not fix the price or terms, the contract or the sale is thereby avoided; but if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

(2) Where such third person is prevented from fixing the price or terms by fault of the seller or the buyer, the party not in fault may have such remedies against the party in fault as are allowed by parts IV and V of this act. ('17 c. 465 § 10)

CONDITIONS AND WARRANTIES

[6015—]11. **Effect of conditions**—(1) Where the obligation of either party to a contract to sell or a sale is subject to any condition which is not performed, such party may refuse to proceed with the contract or sale or he may waive performance of the condition. If the other party has promised that the condition should happen or be performed, such first mentioned party may also treat the non-performance of the condition as a breach of warranty.

(2) Where the property in the goods has not passed, the buyer may treat the fulfillment by the seller of his obligation to furnish goods as described and as warranted expressly or by implication in the contract to sell as a condition of the obligation of the buyer to perform his promise to accept and pay for the goods. ('17 c. 465 § 11)

[6015—]12. **Definition of express warranty**—Any affirmation of fact or any promise by the seller relating to the goods is an express warranty if the natural tendency of such affirmation or promise is to induce the buyer to purchase the goods and if the buyer purchases the goods relying thereon. No affirmation of the value of the goods, nor any statement purporting to be a statement of the seller's opinion only shall be construed as a warranty. ('17 c. 465 § 12)

[6015—]13. **Implied warranties of title**—In a contract to sell or a sale, unless a contrary intention appears, there is—

(1) An implied warranty on the part of the seller that in case of a sale he has a right to sell the goods, and that in case of a contract to sell he will have a right to sell the goods at the time when the property is to pass.

(2) An implied warranty that the buyer shall have and enjoy quiet possession of the goods as against any lawful claims existing at the time of the sale;

(3) An implied warranty that the goods shall be free at the time of the sale from any charge or encumbrance in favor of any third person, not declared or known to the buyer before or at the time when the contract or sale is made.

(4) This section shall not, however, be held to render liable a sheriff, auctioneer, mortgagee, or other person professing to sell by virtue of authority in fact or law goods in which a third person has a legal or equitable interest. ('17 c. 465 § 13)

[6015—]14. **Implied warranty in sale by description**—Where there is a contract to sell or a sale of goods by description, there is an implied warranty that the goods shall correspond with the description and if the contract or sale be by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description. ('17 c. 465 § 14)

[6015—]15. Implied warranties of quality—Subject to the provisions of this act and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract to sell or a sale, except as follows:

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose.

(2) Where the goods are bought by description from a seller who deals in goods of that description (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be of merchantable quality.

(3) If the buyer has examined the goods there is no implied warranty as regards defects which such examination ought to have revealed.

(4) In the case of a contract to sell or a sale of a specified article under its patent or other trade name, there is no implied warranty as to its fitness for any particular purpose.

(5) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(6) An express warranty or condition does not negative a warranty or condition implied under this act unless inconsistent therewith. ('17 c. 465 § 15)

SALE BY SAMPLE

[6015—]16. Implied warranties in sale by sample—In the case of a contract to sell or a sale by sample:

(a) There is an implied warranty that the bulk shall correspond with the sample in quality.

(b) There is an implied warranty that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, except so far as otherwise provided in section 47 (3) [6015—47(3)].

(c) If the seller is a dealer in goods of that kind, there is an implied warranty that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample. ('17 c. 465 § 16)

PART II—TRANSFER OF PROPERTY AS BETWEEN SELLER AND BUYER

[6015—]17. No property passes until goods are ascertained—Where there is a contract to sell unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained, but property in an undivided share of ascertained goods may be transferred as provided in section 6 [6015—6]. ('17 c. 465 § 17)

[6015—]18. Property in specific goods passes when parties so intend—

(1) Where there is a contract to sell specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties, usages of trade and the circumstances of the case. ('17 c. 465 § 18)

[6015—]19. Rules for ascertaining intention—Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

Rule 1. Where there is an unconditional contract to sell specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment, or the time of delivery, or both, be postponed.

Rule 2. Where there is a contract to sell specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property does not pass until such thing be done.

Rule 3. (1) When goods are delivered to the buyer "on sale or return," or on other terms indicating an intention to make a present sale, but to give the buyer an option to return the goods instead of paying the price, the property passes to the buyer on delivery, but he may revest the property in the seller by returning or tendering the goods within the time fixed in the contract, or, if no time has been fixed, within a reasonable time.

(2) When goods are delivered to the buyer on approval or on trial or on satisfaction, or other similar terms, the property therein passes to the buyer.

(a) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(b) If he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

Rule 4. (1) Where there is a contract to sell unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the appropriation is made.

(2) Where, in pursuance of a contract to sell, the seller delivers the goods to the buyer, or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to or holding for the buyer, he is presumed to have unconditionally appropriated the goods to the contract, except in the cases provided for in the next rule and in section 20 [6015—20]. This presumption is applicable, although by the terms of the contract, the buyer is to pay the price before receiving delivery of the goods, and the goods are marked with the words "collect on delivery" or their equivalents.

Rule 5. If the contract to sell requires the seller to deliver the goods to the buyer, or at a particular place, or to pay the freight or cost of transportation to the buyer, or to a particular place, the property does not pass until the goods have been delivered to the buyer or reached the place agreed upon. ('17 c. 465 § 19)

[6015—]20. **Reservation of right of possession or property when goods are shipped—**(1) Where there is a contract to sell specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of possession or property in the goods until certain conditions have been fulfilled. The right of possession or property may be thus reserved notwithstanding the delivery of the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer.

(2) Where goods are shipped, and by the bill of lading the goods are deliverable to the seller or his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill of lading, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

(3) Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the buyer or of his agent, but possession of the bill of lading is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods as against the buyer.

(4) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading together to the buyer to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honor the bill of exchange, and if he

wrongfully retains the bill of lading he acquires no added right thereby. If, however, the bill of lading provides that the goods are deliverable to the buyer or to the order of the buyer, or is endorsed in blank, or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill of lading, or goods from the buyer will obtain the property in the goods, although the bill of exchange has not been honored, provided that such purchaser has received delivery of the bill of lading indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful. ('17 c. 465 § 20)

[6015—]21. **Sale by auction**—In the case of sale by auction—(1) Where goods are put up for sale by auction in lots, each lot is the subject of a separate contract of sale.

(2) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement is made, any bidder may retract his bid; and the auctioneer may withdraw the goods from sale unless the auction has been announced to be without reserve.

(3) A right to bid may be reserved expressly by or on behalf of the seller.

(4) Where notice has not been given that a sale by auction is subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ or induce any person to bid at such sale on his behalf, or for the auctioneer to employ or induce any person to bid at such sale on behalf of the seller or knowingly to take any bid from the seller or any person employed by him. Any sale contravening this rule may be treated as fraudulent by the buyer. ('17 c. 465 § 21)

[6015—]22. **Risk of loss**—Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not, except that—

(a) Where delivery of the goods has been made to the buyer, or to a bailee for the buyer, in pursuance of the contract and the property in the goods has been retained by the seller merely to secure performance by the buyer of his obligations under the contract, the goods are at the buyer's risk from time of such delivery.

(b) Where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault. ('17 c. 465 § 22)

TRANSFER OF TITLE

[6015—]23. **Sale by a person not the owner**—(1) Subject to the provisions of this act, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

(2) Nothing in this act, however, shall affect—

(a) The provisions of any factors' acts, recording acts, or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof.

(b) The validity of any contract to sell or sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction. ('17 c. 465 § 23)

[6015—]24. **Sale by one having a voidable title**—Where the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith, for value, and without notice of the seller's defect of title. ('17 c. 465 § 24)

[6015—]25. Sale by seller in possession of goods already sold—Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods, the delivery or transfer by that person, or by an agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving and paying value for the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same. ('17 c. 465 § 25)

Section 7011 stated the former law as to this section and the following section.

[6015—]26. Creditors' rights against sold goods in seller's possession—Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods and such retention of possession is fraudulent in fact or is deemed fraudulent under any rule of law, a creditor or creditors of the seller may treat the sale as void. ('17 c. 465 § 26)

See note under § [6015—]25.

[6015—]27. Definition of negotiable documents of title—A document of title in which it is stated that the goods referred to therein will be delivered to the bearer, or to the order of any person named in such document is a negotiable document of title. ('17 c. 465 § 27)

[6015—]28. Negotiation of negotiable documents by delivery—A negotiable document of title may be negotiated by delivery—

(a) Where by the terms of the document the carrier, warehouseman or other bailee issuing the same undertakes to deliver the goods to the bearer, or

(b) Where by the terms of the document the carrier, warehouseman or other bailee issuing the same undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the document has indorsed it in blank or to bearer.

Where by the terms of a negotiable document of title the goods are deliverable to bearer or where a negotiable document of title has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the document shall thereafter be negotiated only by the indorsement of such indorsee. ('17 c. 465 § 28)

[6015—]29. Negotiation of negotiable documents by indorsement—A negotiable document of title may be negotiated by the indorsement of the person to whose order the goods are by the terms of the document deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner. ('17 c. 465 § 29)

[6015—]30. Negotiable documents of title marked "Not negotiable"—If a document of title which contains an undertaking by a carrier, warehouseman or other bailee to deliver the goods to the bearer, to a specified person or order, or to the order of a specified person, or which contains words of like import, has placed upon it the words "not negotiable," "non-negotiable" or the like, such a document may nevertheless be negotiated by the holder and is a negotiable document of title within the meaning of this act. But nothing in this act contained shall be construed as limiting or defining the effect upon the obligations of the carrier, warehouseman, or other bailee issuing a document of title of placing thereon the words "not negotiable," "non-negotiable," or the like. ('17 c. 465 § 30)

[6015—]31. Transfer of non-negotiable documents—A document of title which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee. A non-negotiable document cannot be negotiated and the indorsement of such a document gives the transferee no additional right. ('17 c. 465 § 31)

[6015—]32. Who may negotiate a document—A negotiable document of title may be negotiated—

- (a) By the owner thereof, or
- (b) By any person to whom the possession or custody of the document has been entrusted by the owner, if, by the terms of the document the bailee issuing the document undertakes to deliver the goods to the order of the person to whom the possession or custody of the document has been entrusted, or if at the time of such entrusting the document is in such form that it may be negotiated by delivery. ('17 c. 465 § 32)

[6015—]33. Rights of person to whom document has been negotiated—A person to whom a negotiable document of title has been duly negotiated acquires thereby;

- (a) Such title to the goods as the person negotiating the document to him had or had ability to convey to a purchaser in good faith for value and also such title to the goods as the person to whose order the goods were to be delivered by the terms of the document had or had ability to convey to a purchaser in good faith for value, and

- (b) The direct obligation of the bailee issuing the document to hold possession of the goods for him according to the terms of the document as fully as if such bailee had contracted directly with him, ('17 c. 465 § 33)

[6015—]34. Rights of person to whom document has been transferred—A person to whom a document of title has been transferred, but not negotiated, acquires thereby, as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor.

If the document is non-negotiable, such person also acquires the right to notify the bailee who issued the document of the transfer thereof, and thereby to acquire the direct obligation of such bailee to hold possession of the goods for him according to the terms of the document.

Prior to the notification of such bailee by the transferor or transferee of a non-negotiable document of title, the title of the transferee to the goods and the right to acquire the obligation of such bailee may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to such bailee by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor. ('17 c. 465 § 34)

[6015—]35. Transfer of negotiable document without indorsement—Where a negotiable document of title is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the document unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. ('17 c. 465 § 35)

[6015—]36. Warranties on sale of document—A person who for value negotiates or transfers a document of title by indorsement or delivery, including one who assigns for value a claim secured by a document of title unless a contrary intention appears, warrants:

- (a) That the document is genuine;
- (b) That he has a legal right to negotiate or transfer it.
- (c) That he has knowledge of no fact which would impair the validity or worth of the document, and
- (d) That he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose, whenever such warranties would have been implied if the contract of the parties had been to transfer without a document of title the goods represented thereby. ('17 c. 465 § 36)

[6015—]37. Indorser not a guarantor—The indorsement of a document of title shall not make the indorser liable for any failure on the part of the bailee who issued the document or previous indorsers thereof to fulfill their respective obligations. ('17 c. 465 § 37)

[6015—]38. When negotiation not impaired by fraud, mistake or duress—The validity of the negotiation of a negotiable document of title is not impaired by the fact that the negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the document was induced by fraud, mistake or duress to entrust the possession or custody thereof to such person, if the person to whom the document was negotiated or a person to whom the document was subsequently negotiated paid value therefor, without notice of the breach of duty, or fraud, mistake or duress. ('17 c. 465 § 38)

[6015—]39. Attachment or levy upon goods for which a negotiable document has been issued—If goods are delivered to a bailee by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner and a negotiable document of title is issued for them they cannot thereafter, while in the possession of such bailee, be attached by garnishment or otherwise or be levied upon under an execution unless the document be first surrendered to the bailee or its negotiation enjoined. The bailee shall in no case be compelled to deliver up the actual possession of the goods until the document is surrendered to him or impounded by the court. ('17 c. 465 § 39)

[6015—]40. Creditors' remedies to reach negotiable documents—A creditor whose debtor is the owner of a negotiable document of title shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such document or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process. ('17 c. 465 § 40)

PART III—PERFORMANCE OF THE CONTRACT

[6015—]41. Seller must deliver and buyer accept goods—It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract to sell or sale. ('17 c. 465 § 41)

[6015—]42. Delivery and payment are concurrent conditions—Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions; that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer must be ready and willing to pay the price in exchange for possession of the goods. ('17 c. 465 § 42)

[6015—]43. Place, time and manner of delivery—(1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, or usage of trade to the contrary, the place of delivery is the seller's place of business if he have one, and if not his residence; but in case of a contract to sell or a sale of specific goods, which to the knowledge of the parties when the contract or the sale was made were in some other place, then that place is the place of delivery.

(2) Where by a contract to sell or a sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(3) Where the goods at the time of sale are in the possession of a third person, the seller has not fulfilled his obligation to deliver to the buyer unless and until such third person acknowledges to the buyer that he holds the goods on the buyer's behalf; but as against all others than the seller the buyer shall be regarded as having received delivery from the time when such third person first has notice of the sale. Nothing in this section, however, shall affect the operation of the issue or transfer of any document of title to goods.

(4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5) Unless otherwise agreed the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller. ('17 c. 465 § 43)

[6015—]44. Delivery of wrong quantity—(1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts or retains the goods so delivered, knowing that the seller is not going to perform the contract in full, he must pay for them at the contract rate. If, however, the buyer has used or disposed of the goods delivered before he knows that the seller is not going to perform his contract in full, the buyer shall not be liable for more than the fair value to him of the goods so received.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

(4) The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties. ('17 c. 465 § 44)

[6015—]45. Delivery in instalments—(1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

(2) Where there is a contract to sell goods to be delivered by stated instalments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it depends in each case on the terms of the contract and the circumstances of the case, whether the breach of contract is so material as to justify the injured party in refusing to proceed further and suing for damages for breach of the entire contract, or whether the breach is severable, giving rise to a claim for compensation, but not to a right to treat the whole contract as broken. ('17 c. 465 § 45)

[6015—]46. Delivery to a carrier on behalf of the buyer—(1) Where, in pursuance of a contract to sell or a sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is deemed to be a delivery of the goods to the buyer, except in the cases provided for in section 19, rule 5, or unless a contrary intent appears.

(2) Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omits to do so, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer under circumstances in which the seller knows or ought to know that it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such transit. ('17 c. 465 § 46)

[6015—]47. Right to examine the goods—(1) Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

(3) Where goods are delivered to a carrier by the seller, in accordance with an order from or agreement with the buyer, upon the terms that the goods shall not be delivered by the carrier to the buyer until he has paid the

price, whether such terms are indicated by marking the goods with the words "collect on delivery," or otherwise, the buyer is not entitled to examine the goods before payment of the price in the absence of agreement permitting such examination. ('17 c. 465 § 47)

[6015—]48. **What constitutes acceptance**—The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them. ('17 c. 465 § 48)

[6015—]49. **Acceptance does not bar action for damages**—In the absence of express or implied agreement of the parties, acceptance of the goods by the buyer shall not discharge the seller from liability in damages or other legal remedy for breach of any promise or warranty in the contract to sell or the sale. But, if, after acceptance of the goods, the buyer fail to give notice to the seller of the breach of any promise or warranty within a reasonable time after the buyer knows, or ought to know of such breach, the seller shall not be liable therefor. ('17 c. 465 § 49)

[6015—]50. **Buyer is not bound to return goods wrongly delivered**—Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he notifies the seller that he refuses to accept them. ('17 c. 465 § 50)

[6015—]51. **Buyer's liability for failing to accept delivery**—When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods. If the neglect or refusal of the buyer to take delivery amounts to a repudiation or breach of the entire contract, the seller shall have the right against the goods and on the contract hereinafter provided in favor of the seller when the buyer is in default. ('17 c. 465 § 51)

PART IV—RIGHTS OF UNPAID SELLER AGAINST THE GOODS

[6015—]52. **Definition of unpaid seller**—(1) The seller of goods is deemed to be an unpaid seller within the meaning of this act.

(a) When the whole of the price has not been paid or tendered.

(b) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has been broken by reason of the dishonor of the instrument, the insolvency of the buyer, or otherwise.

(2) In this part of this act the term "seller" includes an agent of the seller to whom the bill of lading has been indorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price, or any other person who is in the position of a seller. ('17 c. 465 § 52)

[6015—]53. **Remedies of an unpaid seller**—(1) Subject to the provisions of this act, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has—

(a) A lien on the goods or right to retain them for the price while he is in possession of them;

(b) In case of the insolvency of the buyer, a right of stopping the goods in transitu after he has parted with the possession of them;

(c) A right of resale as limited by this act;

(d) A right to rescind the sale as limited by this act.

(2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and coextensive with his rights of lien and stoppage in transitu where the property has passed to the buyer. ('17 c. 465 § 53)

UNPAID SELLER'S LIEN

[6015—]54. When right of lien may be exercised—(1) Subject to the provisions of this act; the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:

- (a) Where the goods have been sold without any stipulation as to credit;
- (b) Where the goods have been sold on credit, but the term of credit has expired;
- (c) Where the buyer becomes insolvent.

(2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer. ('17 c. 465 § 54)

[6015—]55. Lien after part delivery—Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an intent to waive the lien or right of retention. ('17 c. 465 § 55)

[6015—]56. When lien is lost—(1) The unpaid seller of goods loses his lien thereon—

(a) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the property in the goods or the right to the possession thereof;

- (b) When the buyer or his agent lawfully obtains possession of the goods;
- (c) By waiver thereof.

(2) The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained judgment or decree for the price of the goods. ('17 c. 465 § 56)

STOPPAGE IN TRANSITU

[6015—]57. Seller may stop goods on buyer's insolvency—Subject to the provisions of this act, when the buyer of goods is or becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transitu, that is to say, he may resume possession of the goods at any time while they are in transit, and he will then become entitled to the same rights in regard to the goods as he would have had if he had never parted with the possession. ('17 c. 465 § 57)

[6015—]58. When goods are in transit—(1) Goods are in transit within the meaning of section 57—

(a) From the time when they are delivered to a carrier by land or water, or other bailee for the purpose of transmission to the buyer, until the buyer, or his agent in that behalf, takes delivery of them from such carrier or other bailee;

(b) If the goods are rejected by the buyer, and the carrier or other bailee continues in possession of them, even if the seller has refused to receive them back.

(2) Goods are no longer in transit within the meaning of section 57—

(a) If the buyer, or his agent in that behalf, obtains delivery of the goods before their arrival at the appointed destination;

(b) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent; and it is immaterial that a further destination for the goods may have been indicated by the buyer;

(c) If the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf.

(3) If goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier or as agent of the buyer.

(4) If part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped in transitu, unless

such part delivery has been made under such circumstances as to show an agreement with the buyer to give up possession of the whole of the goods. ('17 c. 465 § 58)

[6015—]59. Ways of exercising the right to stop—(1) The unpaid seller may exercise his right of stoppage in transitu either by obtaining actual possession of the goods or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may prevent a delivery to the buyer.

(2) When notice of stoppage in transitu is given by the seller to the carrier, or other bailee in possession of the goods, he must redeliver the goods to, or according to the directions of, the seller. The expenses of such delivery must be borne by the seller. If, however, a negotiable document of title representing the goods has been issued by the carrier or other bailee, he shall not be obliged to deliver or justified in delivering the goods to the seller unless such document is first surrendered for cancellation. ('17 c. 465 § 59)

RESALE BY THE SELLER

[6015—]60. When and how resale may be made—(1) Where the goods are of a perishable nature, or where the seller expressly reserves the right of resale in case the buyer should make default, or where the buyer has been in default in the payment of the price an unreasonable time, an unpaid seller having a right of lien or having stopped the goods in transitu may resell the goods. He shall not thereafter be liable to the original buyer upon the contract to sell or the sale or for any profit made by such resale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

(2) Where a resale is made, as authorized in this section, the buyer acquires a good title as against the original buyer.

(3) It is not essential to the validity of a resale that notice of an intention to resell the goods be given by the seller to the original buyer. But where the right to resell is not based on the perishable nature of the goods or upon an express provision of the contract or the sale, the giving or failure to give such notice shall be relevant in any issue involving the question whether the buyer had been in default an unreasonable time before the resale was made.

(4) It is not essential to the validity of a resale that notice of the time and place of such resale should be given by the seller to the original buyer.

(5) The seller is bound to exercise reasonable care and judgment in making a resale, and subject to this requirement may make a resale either by public or private sale. ('17 c. 465 § 60)

RESCISSION BY THE SELLER

[6015—]61. When and how the seller may rescind the sale—(1) An unpaid seller having a right of lien or having stopped the goods in transitu, may rescind the transfer of title and resume the property in the goods, where he expressly reserved the right to do so in case the buyer should make default, or where the buyer has been in default in the payment of the price an unreasonable time. The seller shall not thereafter be liable to the buyer upon the contract to sell or the sale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

(2) The transfer of title shall not be held to have been rescinded by an unpaid seller until he has manifested by notice to the buyer or by some other overt act an intention to rescind. It is not necessary that such overt act should be communicated to the buyer, but the giving or failure to give notice to the buyer of the intention to rescind shall be relevant in any issue involving the question whether the buyer had been in default an unreasonable time before the right of rescission was asserted. ('17 c. 465 § 61)

[6015—]62. Effect of sale of goods subject to lien or stoppage in transitu—Subject to the provisions of this act, the unpaid seller's right of lien or stoppage in transitu is not affected by any sale, or other disposition of the goods which the buyer may have made, unless the seller has assented thereto.

If, however, a negotiable document of title has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the right of any purchaser for value in good faith to whom such document has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier, or other bailee who issued such document, of the seller's claim to a lien or right of stoppage in transitu. ('17 c. 465 § 62)

PART V—ACTIONS FOR BREACH OF THE CONTRACT, REMEDIES OF THE SELLER

[6015—]63. Action for the price—(1) Where, under a contract to sell or a sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract or the sale, the seller may maintain an action against him for the price of the goods.

(2) Where, under a contract to sell or a sale, the price is payable on a day certain, irrespective of delivery or of transfer of title, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed, and the goods have not been appropriated to the contract. But it shall be a defense to such an action that the seller at any time before judgment in such action has manifested an inability to perform the contract or the sale on his part or an intention not to perform it.

(3) Although the property in the goods has not passed, if they cannot readily be resold for a reasonable price, and if the provisions of section 64 (4) [6015—64(4)] are not applicable, the seller may offer to deliver the goods to the buyer, and, if the buyer refuses to receive them, may notify the buyer that the goods are thereafter held by the seller as bailee for the buyer. Thereafter the seller may treat the goods as the buyer's and may maintain an action for the price. ('17 c. 465 § 63)

[6015—]64. Action for damages for non-acceptance of the goods—(1) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for non-acceptance.

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.

(3) Where there is an available market for the goods in question, the measure of damages is, in the absence of special circumstances, showing proximate damage of a greater amount, the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept.

(4) If, while labor or expense of material amount are necessary on the part of the seller to enable him to fulfill his obligations under the contract to sell or the sale, the buyer repudiates the contract or the sale, or notifies the seller to proceed no further therewith, the buyer shall be liable to the seller for no greater damages than the seller would have suffered if he did nothing towards carrying out the contract or the sale after receiving notice of the buyer's repudiation or countermand. The profit the seller would have made if the contract or the sale had been fully performed shall be considered in estimating such damages. ('17 c. 465 § 64)

[6015—]65. When seller may rescind contract or sale—Where the goods have not been delivered to the buyer, and the buyer has repudiated the contract to sell or sale, or has manifested his inability to perform his obligations thereunder, or has committed a material breach thereof, the seller

may totally rescind the contract or the sale by giving notice of his election so to do to the buyer. ('17 c. 465 § 65)

REMEDIES OF THE BUYER

[6015—]66. Action for converting or detaining goods—Where the property in the goods has passed to the buyer and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain any action allowed by law to the owner of goods of similar kind when wrongfully converted or withheld. ('17 c. 465 § 66)

[6015—]67. Action for failing to deliver goods—(1) Where the property in the goods has not passed to the buyer, and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain an action against the seller for damages for non-delivery.

(2) The measure of damages is the loss directly and naturally resulting in the ordinary course of events, from the seller's breach of contract.

(3) Where there is an available market for the goods in question, the measure of damages, in the absence of special circumstances showing proximate damages of a greater amount, is the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver. ('17 c. 465 § 67)

[6015—]68. Specific performance—Where the seller has broken a contract to deliver specific or ascertained goods, a court having the powers of a court of equity may, if it thinks fit, on the application of the buyer, by its judgment or decree direct that the contract shall be performed specifically, without giving the seller the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price and otherwise, as to the court may seem just. ('17 c. 465 § 68)

[6015—]69. Remedies for breach of warranty—(1) Where there is a breach of warranty by the seller, the buyer may, at his election—

(a) Accept or keep the goods and set up against the seller, the breach of warranty by way of recoupment in diminution or extinction of the price;

(b) Accept or keep the goods and maintain an action against the seller for damages for the breach of warranty;

(c) Refuse to accept the goods, if the property therein has not passed, and maintain an action against the seller for damages for the breach of warranty;

(d) Rescind the contract to sell or the sale and refuse to receive the goods, or if the goods have already been received, return them or offer to return them to the seller and recover the price or any part thereof which has been paid.

(2) When the buyer has claimed and been granted a remedy in any one of these ways, no other remedy can thereafter be granted.

(3) Where the goods have been delivered to the buyer, he cannot rescind the sale if he knew of the breach of warranty when he accepted the goods, or if he fails to notify the seller within a reasonable time of the election to rescind, or if he fails to return or to offer to return the goods to the seller in substantially as good condition as they were in at the time the property was transferred to the buyer. But if deterioration or injury of the goods is due to the breach of warranty, such deterioration or injury shall not prevent the buyer from returning or offering to return the goods to the seller and rescinding the sale.

(4) Where the buyer is entitled to rescind the sale and elects to do so, the buyer shall cease to be liable for the price upon returning or offering to return the goods. If the price or any part thereof has already been paid, the seller shall be liable to repay so much thereof as has been paid, concurrently with the return of the goods, or immediately after an offer to return the goods in exchange for repayment of the price.

(5) Where the buyer is entitled to rescind the sale and elects to do so, if the seller refuses to accept an offer of the buyer to return the goods, the buyer shall thereafter be deemed to hold the goods as bailee for the seller, but subject to a lien to secure the repayment of any portion of the price which has been paid, and with the remedies for the enforcement of such lien allowed to an unpaid seller by section 53 [6015—53].

(6) The measure of damages for breach of warranty is the loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

(7) In the case of breach of warranty of quality, such loss, in the absence of special circumstances showing proximate damage of a greater amount, is the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty. ('17 c. 465 § 69)

[6015—]70. **Interest and special damages**—Nothing in this act shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed. ('17 c. 465 § 70)

[6015—]71. **Variation of implied obligations**—Where any right, duty or liability would arise under a contract to sell or a sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by custom, if the custom be such as to bind both parties to the contract or the sale. ('17 c. 465 § 71)

PART VI—INTERPRETATION

[6015—]72. **Rights may be enforced by action**—Where any right, duty or liability is declared by this act, it may, unless otherwise by this act provided, be enforced by action. ('17 c. 465 § 72)

[6015—]73. **Rule for cases not provided for by this act**—In any case not provided for in this act, the rules of law and equity including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall continue to apply to contracts to sell and to sales of goods. ('17 c. 465 § 73)

[6015—]74. **Interpretation shall give effect to purpose of uniformity**—This act shall be so interpreted and construed, as to effectuate its general purpose to make uniform the laws of those states which enact it. ('17 c. 465 § 74)

[6015—]75. **Provisions not applicable to mortgages**—The provisions of this act relating to contracts to sell and to sales do not apply, unless so stated, to any transaction in the form of a contract to sell or a sale which is intended to operate by way of mortgage, pledge, charge, or other security. ('17 c. 465 § 75)

[6015—]76. **Definitions**—(1) In this act, unless the context or subject matter otherwise requires—

“Action” includes counterclaim, set-off and suit in equity.

“Buyer” means a person who buys or agrees to buy goods or any legal successor in interest of such person.

“Defendant” includes a plaintiff against whom a right of set-off or counterclaim is asserted.

“Delivery” means voluntary transfer of possession from one person to another.

“Divisible contract to sell or sale” means a contract to sell or a sale in which by its terms the price for a portion or portions of the goods less than the whole is fixed or ascertainable by computation.

“Document of title to goods” includes any bill of lading, dock warrant, warehouse receipt or order for the delivery of goods, or any other document

used in the ordinary course of business in the sale or transfer of goods, as proof of the possession or control of the goods, or authorizing or purporting to authorize the possessor of the document to transfer or receive, either by indorsement or by delivery, goods represented by such document.

“Fault” means wrongful act or default.

“Fungible goods” means goods of which any unit is from its nature or by mercantile usage treated as the equivalent of any other unit.

“Future goods” means goods to be manufactured or acquired by the seller after the making of the contract of sale.

“Goods” include all chattels personal other than things in action and money. The term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

“Order” in sections of this act relating to documents of title means an order by indorsement on the document.

“Person” includes a corporation or partnership or two or more persons having a joint or common interest.

“Plaintiff” includes defendant asserting a right of set-off or counterclaim.

“Property” means the general property in goods, and not merely a special property.

“Purchaser” includes mortgagee and pledgee.

“Purchases” includes taking as a mortgagee or as a pledgee.

“Quality of goods” includes their state or condition.

“Sale” includes a bargain and sale as well as a sale and delivery.

“Seller” means a person who sells or agrees to sell goods, or any legal successor in the interest of such person.

“Specific goods” means goods identified and agreed upon at the time a contract to sell or a sale is made.

“Value” is any consideration sufficient to support a simple contract. An antecedent or pre-existing claim, whether for money or not, constitutes value where goods or documents of titles are taken either in satisfaction thereof or as security therefor.

(2) A thing is done “in good faith” within the meaning of this act when it is in fact done honestly, whether it be done negligently or not.

(3) A person is insolvent within the meaning of this act who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not, and whether he is insolvent within the meaning of the federal bankruptcy law or not.

(4) Goods are in a “deliverable state” within the meaning of this act when they are in such a state that the buyer would, under the contract, be bound to take delivery of them. ('17 c. 465 § 76)

[6015—]76a. Act does not apply to existing sales or contracts to sell—None of the provisions of this act shall apply to any sale, or to any contract to sell, made prior to the taking effect of this act. ('17 c. 465 § 76a)

[6015—]76b. No repeal of uniform warehouse receipt act or uniform bills of lading act—Nothing in this act or in any repealing clause thereof shall be construed to repeal or limit any of the provisions of the act to make uniform the law of warehouse receipts [4514–4575] or of the act to make uniform the law of bills of lading [4434–1 to 4434–57]. ('17 c. 465 § 76b)

[6015—]77. Inconsistent legislation repealed—All acts or parts of acts inconsistent with this act are hereby repealed except as provided in section 76b [6015–76b]. ('17 c. 465 § 77)

[6015—]78. Time when the act takes effect—This act shall take effect on the 1st day of June, 1917. ('17 c. 465 § 78)

[6015—]79. Name of act—This act may be cited as the uniform sales act. ('17 c. 465 § 79)

CHAPTER 52

PARTITION FENCES

6017. Legal fences—All fences consisting of not less than 32-inch woven wire and two barbed wires firmly fastened to well set posts not more than one rod apart, the first barbed wire being above and not more than 4 inches from the woven wire and the second barbed wire being above and not more than 8 inches from the first wire; all fences consisting of not less than 40-inch woven wire and one barbed wire firmly fastened to well set posts not more than one rod apart, the said barbed wire being above and not more than 4 inches from the said woven wire; all fences consisting of woven wire not less than 48 inches in height, and one barbed wire not more than 4 inches above said woven wire firmly fastened to well set posts not more than one rod apart; all fences consisting of not less than four barb wires with at least forty barbs to the rod, the wires to be firmly fastened to posts not more than one rod apart, the top wire to be not more than 48 inches high and the bottom wire not less than twelve inches nor more than sixteen inches from the ground; and all fences consisting of rails, timbers, wires, boards, stone walls or any combination thereof or of streams, lakes, ditches, or hedges, which shall be considered by the fence viewers as equivalent to any of the fences herein described shall be deemed legal and sufficient fences. In all cases where adjoining land owners disagree as to the kind of fence to be built on any division line, the matter shall be referred to the fence viewers who shall determine what kind of fence shall be built on such line and shall order such fence built according to law. Whenever the lands of two persons adjoin, and the land of one of such persons is enclosed on all sides except the side forming a division line between such lands by a woven wire fence, then and in such case each of such persons shall erect a fence of like character and quality along such division line for a distance of one-half the total length thereof, and shall thereafter maintain the same in equal shares. ('15 c. 282, amended '17 c. 408 § 1)

Cited (130-513, 153-1086).

6018. Occupants to maintain—The adjoining owners or occupants of lands in this state when the land of one or both of such owners is in whole or in part improved and used, and one or both of such owners desires his or their land to be in whole or in part fenced, shall build and maintain the partition fence between their lands in equal shares. (Amended '15 c. 173 § 1)

6019. Neglect—Complainant may build or repair—In case any person neglects to build repair or rebuild any partition fence which of right he ought to build or maintain the aggrieved party may complain to the fence viewers who, after notice to the parties, shall examine such fence or into the need of such proposed fence and if they determine that the fence then existing is insufficient or a new fence is necessary, they shall notify the delinquent owner or occupant in writing to that effect and direct him or them to build, repair or re-build the fence within such time they deem reasonable and if the delinquent fails to comply with such directions, the complainant may build repair or re-build such fence at his own expense subject to reimbursement as hereinafter provided. (Amended '15 c. 173 § 1)

6020. Value of cost and repairs, etc., recoverable—When any such new or deficient fence built, repaired or re-built by the complainant under the provisions of Section 2751, is adjudged sufficient by the fence viewers, they, after giving the occupants reasonable notice and an opportunity to be heard shall ascertain the expense thereof and give to the complainant building, repairing or re-building the same a certificate of their decision under their hands and of the amount of such expense together with their fees; and thereupon, such complainant may demand, either of the owner or occupant of the land where the fence was wanting or deficient double such ascertained expense together

with such fees; and in case of failure to pay the sum so due within one month after demand, the complainant may recover the same, with interest in a civil action. (Amended '15 c. 173 § 1)

CHAPTER 53

ESTRAYS AND BEASTS DOING DAMAGE

MISCHIEVOUS DOGS

6052. Injury by dogs—All owners or keepers of any dog or dogs, that kill, wound, or worry any domestic animal or animals, shall be jointly and severally liable to the owner of such animal or animals for all damages done by such dog or dogs, without proving notice to or knowledge, by any such owner or keeper of such dog or dogs, that any or either of them was mischievous or disposed to kill or worry any domestic animal. (Amended '15 c. 344 § 1)

Section 2 repeals inconsistent acts, etc.

CHAPTER 54

UNCLAIMED PROPERTY

6075. Unclaimed baggage, etc.—Delivery to warehouseman—
124-530, 144+1134.

6077. Sale—Notice—

A sale within a year from receipt of the goods is a conversion (124-530, 144+1134). Trover and Conversion, ~~6~~9(7); Warehousemen, ~~6~~33.

CHAPTER 56

AUCTIONEERS

6083. Licensed by county board or auditor for state—The county board or auditor may license any voter in its county as an auctioneer. Such license shall be issued by the auditor and shall authorize the licensee to conduct the business of an auctioneer in the state of Minnesota for the period of one year. It shall be recorded by the auditor in a book kept for that purpose. Before such license is issued the licensee shall pay into the county treasury a fee of ten dollars (\$10.00). Provided, that any person may be licensed as an auctioneer for the purpose of making sales of pure bred or grade live stock only upon the payment of the fee and the giving of the bond as above provided. (Amended '17 c. 87 § 1)

Sections 6083-6088 are not violative of Const. art. 1 § 2, or Const. U. S. art. 4 § 2, or Amendment 14 § 1; nor are they invalid as delegating legislative power to the county board or county auditor (127-150, 149+9, L. R. A. 1915B, 151). Constitutional Law, ~~6~~63(3), 206(4), 208(6), 230(3).

The sureties on the bond of a county auditor are not liable to the county for money received by the auditor under this section, and converted by him, since the money is not payable to the auditor, and his receipt of the same was outside his official duties (133-274, 158+394). Counties, ~~6~~98(1).

6088. Unlicensed sales—

See notes under § 6083.

CHAPTER 56A

HAWKERS, PEDDLERS AND TRANSIENT MERCHANTS

HAWKERS AND PEDDLERS

6090. License, how applied for and issued—

The sureties on the bond of a county auditor are not liable for money paid to the auditor under this section, and converted by him, since the money is not payable to the auditor, and his receipt of the same was not within the scope of his official duties (133-274, 158+394). Counties, ~~§~~98(1).

CHAPTER 56B

TRADE NAMES

6107. Commercial business—Trade and individual names—Certificate—
129-472, 152+885, Ann. Cas. 1917A, 257.

This act cannot be applied to prevent the enforcement of a contract based on an interstate shipment of goods (133-240, 158+239). Commerce, ~~§~~40(1); Corporations, ~~§~~673.

6113. Pleading failure to file certificate—Costs—

A plea of violation of this statute, interposed to prevent enforcement of a contract growing out of an interstate shipment of goods, held sham, and properly stricken (133-240, 158+239). Pleading, ~~§~~360(3).

CHAPTER 58

CORPORATIONS

GENERAL PROVISIONS

6136. Public service corporations—

A commercial railroad must first secure a franchise from the city in the manner provided by law before it can construct its tracks in a street; and where it fails to obtain such franchise, and to condemn a right of way in pursuance thereof, an abutting owner may restrain the maintenance and operation of the tracks (131-183, 154+948). Eminent Domain, ~~§~~169, 276.

The furnishing of electric light and power to the public is a public service, for which land or water may be taken (128-415, 151+198). Eminent Domain, ~~§~~35.

A public service corporation may take private rights in navigable streams, but cannot interfere with the navigable capacity of the stream (128-415, 151+198). Eminent Domain, ~~§~~45.

The city of Minneapolis held to have no power to enter into a contract with a commercial railway company, by which the city agrees to pay part of the expense of strengthening a bridge in order that the same may be used by the railway company (124-351, 145+609, 50 L. R. A. [N. S.] 143). Municipal Corporations, ~~§~~248(1); Railroads, ~~§~~75(3).

6137. State and local control—Eminent domain—

Construction of special charter provision (see 130-71, 153+262, Ann. Cas. 1916B, 286).

St. Paul City Railway Company, held, under its franchise, required to construct extensions as directed by the common council of St. Paul, provided such direction is reasonable (122-163, 142+136). Street Railroads, ~~§~~11. 28(3).

A railroad company may take property for a side track which is to become a part of its railway system, such use being for a public purpose (135-323, 160+866). Eminent Domain, ~~§~~20(5).

The rights of a public service corporation to divert water from navigable streams of one drainage basin into those of another drainage basin determined (127-23, 148+561). Navigable Waters, ~~§~~34.

[6137—]1. Change of harbor lines or river, etc.—Purchase or condemnation—Whenever the United States, the State of Minnesota, or other governmental authority, having jurisdiction so to do, has authorized or may here-

after authorize change of harbor lines or diversion of channel, or other change in any river, stream or water course in the State of Minnesota, any railway company, terminal company or depot company, incorporated or licensed to engage in the business of transportation of freight or passengers in this state, interested in such change by reason of the improvement and enlargement of its property, or otherwise, may acquire the lands and premises needed therefor. Such company may, in its own name, either by purchase or by condemnation, obtain the title to such lands and premises, or any interest therein, including the lands or any interest therein belonging to any municipal corporation in this state. ('15 c. 45 § 1)

Section 5 repeals inconsistent acts, etc.

[6137—]2. **Same—Right of eminent domain, how exercised**—Proceedings to condemn lands needed for such change may be commenced and prosecuted by such corporation to final judgment under the statutes of this state in respect of the taking of property by right of eminent domain; and all of the General Laws of this state in respect of condemnation of property shall apply thereto and govern and control such proceedings. ('15 c. 45 § 2)

[6137—]3. **Same—Municipality may contest**—Any municipality, interested in the land proposed to be taken in such proceedings, may, if its interest seems to so require, contest the necessity of the condemnation of its interest in the premises proposed to be taken. ('15 c. 45 § 3)

[6137—]4. **Same—Conveyances**—Upon acquiring title to said lands and premises, whether by purchase or condemnation, such corporation shall make due conveyance thereof to the United States, the State of Minnesota or other governmental authority mentioned herein. Likewise, any municipal corporation, having any interest in said lands or premises, may, upon such terms as to said municipality its interests may seem to require, make due conveyance thereof either to said company or to said governmental authority. ('15 c. 45 § 4)

6139. Manufacturing and mining companies—

A corporation organized to generate electricity for public consumption is a "manufacturing corporation," within Const. art. 10 § 3, though it possesses the power of eminent domain (125-20, 145+611). Corporations, 6-219.

6147. How organized—Certificate—

129-472, 152+885, Ann. Cas. 1917A, 257.

A corporation having vested the management of its affairs in a board of directors in pursuance of this section, the corporation was not liable on notes signed by the president alone, where a by-law, passed in pursuance of § 6172, post, required that notes should be signed by both the president and secretary; the directors not having ratified such notes (134-445, 159+1078). Corporations, 6-414(2), 429.

[6150—]1. **Defective publication—Curative**—That in all cases where any corporation, purporting to have been formed under and by virtue of Title two, of Chapter thirty-four, of the General Statutes of 1894, of this state, whose articles of incorporation have been heretofore actually filed and recorded in the office of the secretary of state of this state, and actually filed for record and recorded in the office of the register of deeds of the proper county, but which articles of incorporation were in fact published only one week, instead of two successive weeks as required by law, in a weekly newspaper of the proper county, all such corporations, with the records thereof, are hereby legalized and confirmed, and shall have the same effect, as if they had been duly organized and the articles of incorporation duly published. Provided, however, that this act shall not apply to any action heretofore commenced or now pending in any of the courts of this state. ('15 c. 120 § 1)

[6150—]2. **Defective filing of articles of certain corporations—Curative**—That where proceedings for incorporation under Title 3 of Chapter 34 of the General Statutes of Minnesota for 1878 have heretofore been had or taken by any persons and the corporation so formed, or attempted to be formed, has entered upon the transaction of business without having filed its articles of incorporation in the office of the Secretary of State but has filed said articles in the office of the Register of Deeds of the proper county, and has since filed

and caused to be recorded a copy of said articles with the Secretary of State, certain proceedings for such incorporation, if otherwise conformable to law, are hereby legalized and made valid and said corporation is duly legalized and made valid as if said articles had originally been filed in both of said offices; and all acts, contracts or proceedings of such corporation, its trustees, officers and agents, are hereby legalized and confirmed and made of the same validity as though such articles had been filed in both of the offices, of the Secretary of State and the office of the Register of Deeds of the proper county, before such business had been transacted. ('17 c. 50 § 1)

[6152—]1. Mortgages or deeds of trust by public service corporations—After-acquired property—Any public service corporation owning property in this state may mortgage or execute deeds of trust of the whole or any part of its property and franchises to secure money borrowed by it for the construction and equipment of its lines and properties and for its corporate purposes, and issue its corporate bonds in sums of not less than One Hundred Dollars (\$100) secured by such mortgages or deeds of trust, bearing interest at a rate not exceeding six per cent (6%) per annum; such mortgages or deeds of trust may by their terms include after-acquired property, real and personal, and shall be as valid and effectual for that purpose as if such after-acquired property were owned by and in possession of the corporation giving such mortgage or deed of trust at the time of the execution thereof. ('17 c. 10 § 1)

[6152—]2. Same—Mortgages or deeds of trust legalized—That in cases where any public service corporation owning property in this state has mortgaged or executed deeds of trust of the whole or any part of its property and franchises to secure money borrowed by it for the construction and equipment of lines and properties and for its corporate purposes, and issued its corporate bonds in sums of not less than One Hundred Dollars (\$100) secured by mortgages or deeds of trust, bearing interest at a rate not exceeding six per cent (6%) per annum and such mortgages or deeds of trust have by their terms included after-acquired property, real and personal, such mortgages and deeds of trust are hereby legalized and made as valid and effectual to all intents and purposes as if such after-acquired property were owned by and in possession of the corporation giving such mortgage or deed of trust at the time of the execution thereof. ('17 c. 10 § 2)

6154. By-laws, how adopted—

A purchaser of corporate notes is chargeable with notice of a by-law, passed under this section, and in accordance with § 6172, requiring that notes be signed by both the president and secretary (134-445, 159+1078). Corporations, 429.

6163. Same—Notice to stockholders—

This section is repealed by § 7179 (123-382, 143+984, 49 L. R. A. [N. S.] 597). Infants, 18.

[6166—]1. Corporations for pecuniary profit not empowered to take private property—Renewal in certain cases—Any corporation heretofore organized under the General Laws of this state for pecuniary profit and not empowered to take private property for public use, whose period of duration has expired less than three years before the passage of this act and which has continued to carry on its business without a renewal of its said period, may during the three years allowed by law for winding up its affairs renew the period of its corporate existence from the date of expiration of said period of duration for an additional term not exceeding thirty years, with the same force and effect as if renewed before its said period of duration expired, by taking the same proceedings and paying into the state treasury the same incorporation fees provided by law for the renewal of the corporate existence of such corporation in cases where such renewal is made before the end of its period of duration.

Provided, however, that the proceedings to obtain such renewal shall be taken within six months after the passage of this act, and provided further, that this act shall not apply to any corporation whose charter has been declared forfeited by the final judgment of any court of competent jurisdiction in this state. ('15 c. 47 § 1)

[6166—]2. Corporations for pecuniary profit—Renewal in certain cases—Any corporation heretofore organized, for pecuniary profit, under the laws of this state, whose period of duration has expired less than four years prior to the passage of this act, and, through inadvertence or otherwise, the same has not been renewed, and such corporation has continued to transact its business, may renew its corporate existence from the date of the expiration of its period of duration for an additional period not exceeding the period of thirty (30) years from and after the time of its expired period of duration, with the same force and effect as if renewed prior to the expiration of its said term of existence, by taking the same proceedings and by paying into the state treasury the same incorporation fees, if any, as now provided by law for the renewal of the corporate existence of such corporation in cases where such renewal is made before the end of its period of duration.

Provided, that such proceedings to obtain such extension shall be taken within six (6) months after the passage of this act, and provided further, that this act shall not apply to any corporation the charter of which has been declared forfeited by the final judgment of any court of competent jurisdiction in this state. ('17 c. 30 § 1)

[6166—]3. Flouring mill corporations—Renewal in certain cases—That in any case where the corporate term of any corporation created under the laws of this state for the purpose of operating a flouring mill, and the business incident thereto, expired in the month of January, 1917, and such corporation, during said month of January, 1917, shall have initiated in good faith the proceedings authorized by law, (if taken before the corporate term expired), for the extension of its corporate term, and at a special meeting of its stockholders, held in the month of January, 1917, shall have adopted, by a vote of more than three-fourths of the stock, a resolution extending the term of said corporation—which resolution cannot be recorded or published because of the expiration of said corporate term, before the adoption thereof—such corporation is hereby granted until May 1st, 1917, to legally take the necessary steps to extend its corporate existence; and when such steps are taken within said period, such proceedings shall relate back to the date of the expiration of said original corporate period. ('17 c. 132 § 1)

[6166—]4. Cooperative creamery associations—Renewal in certain cases—Any co-operative creamery association whose period of duration has expired less than three years before the passage of this act and which has continued to carry on its business without a renewal of its said period, may renew the period of its corporate existence from the date of expiration of said period of duration for an additional term not exceeding 20 years, with the same force and effect as if renewed before its said period of duration expired, by taking the proceedings provided by law for the renewal of the corporate existence of such corporation in cases where such renewal is made before the end of its period of duration. Provided, however, that the proceedings to obtain such renewal shall be taken within six months after the passage of this act. And provided further that this act shall not affect any pending litigation nor apply to any corporation whose charter has been declared forfeited by the final judgment of any court of competent jurisdiction in this state. ('17 c. 115 § 1)

[6170—]1. Defective proceedings for renewal—Curative—That in any case where a corporation created by and under the laws of this State shall have within the period of its corporate existence initiated in good faith proceedings authorized by law for the extension of its corporate existence, which said proceedings were defective, said corporation shall have up to and including the first day of July, 1917, to adopt a resolution to extend its corporate existence and to record the same in the office of the Register of Deeds of the county where said corporation is located, and of the Secretary of State, and to have the same duly published, as provided by law, and upon so doing, the extension of the existence of said corporation shall be in all respects legal and valid.

Provided that the provisions of this act shall not apply to any action or proceedings now pending in any of the courts of this State. ('17 c. 40 § 1)

[6170—]2. **Defective proceedings for renewal of local building and loan associations—Curative**—That in any case where a local building and loan association, created by and under the laws of this state, shall have within the period of its corporate existence, initiated in good faith, proceedings authorized by law for the renewal and extension of its corporate existence, which said proceedings were taken in the month of February, 1916, and were defective, and where notice of the meeting at which the resolution to renew and extend the corporate existence of the corporation was not mailed to each of the stockholders as provided by section 6342 of chapter 58 General Statutes of Minnesota, 1913, said corporation shall have up to and including the first day of May, 1917, to issue a new call for a special meeting of the stockholders of such corporation, and mail notice thereof to each of the stockholders at least ten days prior to the date set for such special meeting, and clearly specifying in said call and notice the purpose thereof, to adopt a new resolution to renew and extend its corporate existence, and to properly certify the same, submit it to the department of banking of the state for its approval, and to file with the secretary of state, and to record the same in the office of the register of deeds of the county where such corporation is located, and to have the same published, all according to law, and upon so doing the renewal and extension of the corporate existence of such corporation shall be in all things valid. Provided, that the provisions of this act shall not apply to any action or proceeding now pending in any of the courts of this state. ('17 c. 178 § 1)

6171. Business, how managed—

The directors represent the corporation only when acting in meeting as a board (129-353, 152+725). Corporations, ~~§~~298(1).

An assignment for creditors executed by a corporation held valid, though a part of the directors were not present at the meeting at which the assignment was directed to be made (126-464, 148+459). Corporations, ~~§~~298(5).

Where the duties of directors are not defined by charter or statute, the stockholders may select other agencies for the management of the corporate business, and such selection may arise from implication; and the power so bestowed may extend to the execution of a mortgage (132-160, 156+268). Corporations, ~~§~~398(1), 399(8), 477(3).

The directors have power to adopt a resolution to the effect that the corporation shall become a voluntary bankrupt (204 Fed. 577, 123 C. C. A. 103). Corporations, ~~§~~298(3, 5), 550(1, 3).

Where a director became involved in an altercation in the company's office, and thereafter took no part in the affairs of the company, and brought suit to cancel his stock purchase, he thereby abandoned his office, and the remaining two directors had authority to pass a resolution that the company go into bankruptcy at a meeting of which the retiring member was not notified (204 Fed. 577, 123 C. C. A. 103). Corporations, ~~§~~298(3), 291.

6172. Officers—Certain corporations legalized—

One claiming to be a holder in due course of corporation notes is chargeable with notice of a by-law of the corporation, enacted in accordance with this section, requiring that notes be signed by both the president and secretary, and the corporation is not liable on the notes where they were signed by the president alone, and the corporation had not ratified his act (134-445, 159+1078). Corporations, ~~§~~414(2), 429.

6176. Transfer of stock—

A pledgee of stock, but who appears in the transfer, as recorded on the books of the company, as the general owner of the stock, is liable as a stockholder for corporate debts; he being estopped to deny such liability. Evidence held to show that failure to show on the stock transfer records of a corporation the fact that a transfer of stock was a pledge and not a sale resulted from the negligence of the transferee and not the negligence of the corporation, so that the transferee was liable to creditors (127-346, 149+462, Ann. Cas. 1916C, 565). Corporations, ~~§~~244(8), 361.

6178. Liability of stockholders—

Subd. 1—135-339, 160+1014; note under Const. art. 10 § 3.

Subd. 3—Liability on guaranty (121-288, 141+161). Corporations, ~~§~~218.

6183. Record of stock—Reports—Dividends—

Under the provision of this section that all the books and records shall at all reasonable times and for all purposes be open to inspection of stockholders, the president of a corporation, owning a majority of the stock thereof, may maintain mandamus to compel inspection of the books of the corporation to enable him to resist a prosecution for embezzlement of the corpo-

rate funds; he being presumed innocent until convicted, and the mere charge of crime not putting him in the attitude of coming into court with unclean hands (135-479, 160+486). *Mandamus*, ¶129.

6185. Amendment of certificate—The certificate of incorporation of any corporation now or hereafter organized and existing under the laws of this state may be amended so as to change its corporate name, or so as to increase its capital stock, or so as to change the number and par value of the shares of its capital stock, or in respect of any other matter which an original certificate of a corporation of the same kind might lawfully have contained, by the adoption of a resolution specifying the proposed amendment, at a regular meeting or at a special meeting called for that expressly stated purpose, in either of the following ways: (1) by majority vote of all its shares, if a stock corporation; or if not, (2) by majority vote of its members; or, in either case (3) by majority vote of its entire board of directors, trustees, or other managers within one year after having been thereto duly authorized by specific resolution duly adopted at such a meeting of stockholders or members, and by causing such resolution to be embraced in a certificate duly executed by its president and secretary, or other presiding and recording officers, under its corporate seal, and approved, filed, recorded, and published in the manner prescribed for the execution, approval, filing, recording, and publishing of a like original certificate.

As to a local building and loan association, the resolution to amend may be adopted as above provided or by a two-thirds vote of the stockholders of the association attending the meeting in person or by proxy. ('17 c. 404 § 1)

[6186—]1. **Corporations other than for pecuniary profit—Increase or decrease of trustees—Number and quorum**—That any corporation other than those for pecuniary profit heretofore or hereafter incorporated by virtue of any law of this state, may by resolution of its board of trustees, adopted at any regular or called meeting, by a majority vote thereof, increase or decrease the number of trustees of such corporation and provide for their election, and may also in such resolution provide for the number of trustees of said corporation which shall constitute a quorum; and a copy of such resolution subscribed and sworn to by the president and secretary of such corporation, shall be recorded in the office of the register of deeds of the county where the corporation is located and in the office of the secretary of state. ('17 c. 155 § 1)

6193. Capital stock—How classified and issued—

Sole owners and officers of newly formed corporation, issuing stock to themselves in exchange for property excessively valued, held not required to account to subsequent purchasers of stock at face value (124-279, 144+952). Corporations, ¶107.

A contract between promoters of a corporation held fraudulent as to the promoters' associates and the corporation subsequently organized, there being no ratification with knowledge of the facts (128-197, 148+47). Corporations, ¶79.

Under this section, and articles of incorporation and by-laws inserted in stock certificate, corporation held obliged to redeem its preferred stock and pay accumulated dividends (162+677). Corporations, ¶68.

"Preferred stock" is stock entitled to a preference over other kinds of stock in the payment of dividends, which are to come out of net earnings and not out of capital; the stockholder being still a stockholder making a contribution to capital, and not a creditor, or a lender (162+677). Corporations, ¶156.

6194. Stock certificates, to whom issued—

A defense to a note in payment of a share of stock in a corporation is not made out merely by the plea and proof that no share certificate had been delivered or tendered to the purchaser (123-208, 143+353, L. R. A. 1915A, 464, Ann. Cas. 1915A, 420). Corporations, ¶90(1).

6197. Dissolution of corporations—

Dissolution of corporation at suit of minority stockholders (see 134-148, 158+820). Corporations, ¶614(1).

[6200—]1. **Extending time for certain corporations—Curative**—When any corporation other than a corporation having the power of eminent domain which has been dissolved more than three years, by expiration or forfeiture of its charter, decree of court or otherwise, did not fully close its affairs and convey all its property within the three years' limit prescribed by

General Statutes 1894, Section 3431, Section 2883, Revised Laws 1905, and Section 6198 General Statutes 1913, the time so limited is hereby extended for two years from and after the passage of this act; and any and all conveyances theretofore made by any such corporation or its proper officers and any and all acts done in disposing of the property of such corporation and closing its affairs, after the expiration of three years from the date of its dissolution, are hereby legalized and made of the same force and effect as though the same had been done within such three years. Provided, that nothing herein contained shall be construed as affecting any vested rights or any action or proceeding now pending. ('15 c. 161 § 1)

[6200—]2. **Extending time for certain corporations—Curative**—When any corporation other than a corporation having the power of eminent domain which has been dissolved more than three years, by expiration or forfeiture of its charter, decree of court or otherwise, did not fully close its affairs and convey all its property within the three years' limit prescribed by General Statutes 1894, section 3431, section 2883, Revised Laws 1905, and section 6198 General Statutes 1913, the time so limited is hereby extended for one year from and after the passage of this act; and any and all conveyances theretofore made by any such corporation or its proper officers and any and all acts done in disposing of the property of such corporation and closing its affairs, after the expiration of three years from the date of its dissolution, are hereby legalized and made of the same force and effect as though the same had been done within such three years. Provided, that nothing herein contained shall be construed as affecting any vested rights or any action or proceeding now pending. ('17 c. 153 § 1)

[6200—]3. **Extending time for certain corporations—Curative**—Where any corporation other than a corporation having the power of eminent domain, which has been dissolved more than three years by expiration or forfeiture of its charter, decree of court, by statutory proceedings, or otherwise, did not fully close its affairs and convey all its property within the three year limit prescribed by General Statutes, 1913 section 6198, and where any such corporation has, claims, or appears to have or claim any interest in or to any property, the time so limited is nevertheless extended for two years from and after the passage of this act for the purpose of closing up the affairs of any such corporation, conveying its property, and for the purpose of authorizing and permitting service of process in actions at law or equity, or otherwise, including actions under chapter 65 General Statutes, 1913, and for service of process by publication according to law against such corporations, and in order that any such corporations may prosecute and defend actions and be served with process therein. ('17 c. 447 § 1)

[6200—]4. **Same—Conveyances, etc., legalized**—Any and all conveyances of property by any such corporations and any and all proceedings, and actions heretofore, commenced or had, including actions under chapter 65, General Statutes, 1913, including service of process against any such corporations after the expiration of the three year limit prescribed by General Statutes, 1913, section 6198, are hereby legalized and made of the same force and effect as though the same had been done within said three year limit. Provided, that in any said proceedings or actions, the defendant therein shall have three months from and after the passage of this act to appear in said proceedings and defend therein. ('17 c. 447 § 2)

FOREIGN CORPORATIONS

6206. Office and agent in state—Every foreign corporation for pecuniary profit, before it shall be authorized or permitted to transact any business in this state, or to continue business herein if already established, or to acquire, hold or dispose of property within this state, or to sue or maintain any action at law or otherwise in any courts in this state, shall, in writing, appoint an agent duly authorized to accept service of process and upon whom service of process may be had in any action to which such corporation shall be a party, and service upon such agent shall be due and personal service upon such

corporation. Such agent shall reside in this state and, maintain an office or place of business therein, and such appointment shall set forth the residence of said agent and the street number address of the office or place of business of said agent. An authenticated copy of the appointment of such agent shall be filed with the Secretary of State and a certified copy thereof shall be prima facie evidence of the appointment and authority of such agent.

In case the place of residence or the office or place of business of said agent shall be changed after the filing of said appointment, an affidavit of such agent, setting forth his place of residence and street number address of his office or place of business, shall be filed in the office of the Secretary of State.

Provided that if said agent cannot be found in the county of his residence, as shown by the return of the sheriff of such county upon such process, then the same may be served by leaving with the Secretary of State two copies thereof, and thereupon the Secretary of State shall immediately mail one such copy to the corporation at its address as stated in the records of the Secretary of State, and one copy to the agent of such corporation at his address as set forth in the appointment of such agent or the affidavit herein provided. (Amended '17 c. 49 § 1)

Cited (132-19, 155+765).

128-171, 150+790; note under § 6208.

A contract for the sale and shipment to a resident of this state of a machine, coupled with an agreement to install the same in a building of the purchaser in this state, is not an interstate commerce transaction, the agreement for installation not being a necessary or essential part of the contract of sale, and the whole contract is unenforceable by the seller, a foreign corporation, which has not complied with this section and § 6207 (161+215, L. R. A. 1917C, 1012). Commerce, Ⓔ40(1).

6207. Filing articles—License fees—

Cited (132-19, 155+765).

161+215, L. R. A. 1917C, 1012; 128-171, 150+790; notes under § 6208.

What constitutes doing business in state, for purpose of sustaining service of process on agent (see 131-335, 155+103). Corporations, Ⓔ642(1).

The provision that on an increase of its capital stock a foreign corporation shall pay a fee of \$5 for every \$10,000 "of such increase of said proportion of capital stock" means that upon an increase the corporation shall pay a fee based upon the proportion of the increased capital stock used in the state (133-175, 157+1082). Corporations, Ⓔ648.

6208. Penalties—Exceptions—

Cited (132-19, 155+765).

A foreign corporation, which has entered into an interstate contract, does not lose its right to enforce such contract by subsequently engaging in business without complying with our laws (128-171, 150+790). Commerce, Ⓔ46; Corporations, Ⓔ661(2).

A foreign corporation, selling goods upon orders received through traveling salesmen, is engaged in interstate commerce; and its transactions are not rendered local by the fact that it advertises its goods in this state, or that such salesmen turn in their orders to local distributors, to be filled by them, if the corporation disposes of its goods in the manner stated (128-171, 150+790). Commerce, Ⓔ40(3).

[6208—]1. Failure to maintain office—Curative—In all cases where any corporation has heretofore filed a duly authenticated copy of its charter or articles of incorporation with the secretary of state, and also filed with such officer a duly authenticated appointment of an agent in this state authorized to accept service of process and upon whom service of process might be had in any action to which said foreign corporation might be a party and has paid the fees required by law, and the secretary of state has issued his certificate authorizing such foreign corporation to do business in this state and to sue and maintain actions therein, then in every such case such foreign corporation is hereby authorized to do business in this state and to sue and maintain actions and to own property therein for the period set forth in the certificate of the secretary of state, notwithstanding the failure of any such corporation to maintain a public office or place in this state for the transaction of its business; provided, that this act shall not affect any action or proceeding now pending in any of the courts of this state. ('17 c. 430 § 1)

6209. Contracts and conveyances of certain corporations legalized—

This section held to have legalized a loan made by a building and loan association before compliance with §§ 6208-6208 (132-19, 155+765). Corporations, Ⓔ657(1).

6210. Same—Pending actions—

132-19, 155+765.

6211. Contracts and conveyances of certain corporations legalized—

132-19, 155+765.

6212. Same—Pending actions—

132-19, 155+765.

[6212—]1. **Contracts and conveyances of certain corporations legalized—** That any and all contracts with, and any and all conveyances to or from any foreign corporation heretofore and now doing the business of a general building and loan association in this state, which has heretofore at any time complied with, or attempted to comply with Chapters Sixty-nine (69) and Seventy (70) of General Laws of the State of Minnesota for the year 1899, now known as Sections 2888, 2889, and 2890, Revised Laws of the State of Minnesota, 1905 [6206-6208], relating to the admission of foreign corporations for pecuniary profit to do business in this state and requiring certain fees to be paid by such corporations, and has paid into the State Treasury the fees provided for by said law, and has obtained from the Secretary of State a certificate that said corporation has complied with the laws of this state in this respect, or has complied in whole or in part, or attempted to comply with the provisions of Section 3060 of the Revised Laws of Minnesota, 1905, as the same originally existed, or as the same was amended by Chapter 24 of the General Laws of Minnesota for the year 1909 [6437], or has deposited securities with the Superintendent of Banks in the amount of not less than One Hundred Thousand (\$100,000.00) Dollars, under the provisions of said section 3060 [6437], and which corporation heretofore has made, or which shall hereafter within 60 days after the taking effect of this act make the deposit of securities with the Superintendent of Banks as now required by the laws of the State of Minnesota, and within the said time shall comply with all the provisions of the laws of the said state relative to such foreign corporations transacting such business in the State of Minnesota, are hereby legalized, confirmed and validated, and all such contracts are hereby made valid and enforceable by or against any such corporation, as fully and to the same extent as if such corporation had in all things complied with the laws of said state before transacting any of said business in said state. ('15 c. 92 § 1)

[6212—]2. **Same—Pending actions—** This act shall not apply to any action now pending in the State of Minnesota wherein the validity of such contracts or conveyances is called in question on account of the failure of any such corporation sooner to comply with such law. ('15 c. 92 § 2)

PUBLIC SERVICE CORPORATIONS**RAILROAD CORPORATIONS****6214. Plat—Payment—Conveyance—Reservation of minerals—New right of way—**

G. L. 1878 c. 73 cited—124-271, 144+960.

6236. Right of way over public ways—

Operation of commercial railroad upon public street imposes additional servitude, which municipality cannot authorize (162+453). Municipal Corporations, ¶680, 681(6).

This section has no application to a case of occupation of a street by a commercial railroad, but is confined to the crossing of a street (131-183, 154+948). Eminent Domain, ¶119(2).

6237. Power to acquire property—

Cited (121-233, 141+170).

6246. Right of eminent domain in certain cases—

Taking of property for a side track which is to become a part of the railway system is for a public use (135-323, 160+866). Eminent Domain, ¶20(5).

The right of a public service corporation to divert water from navigable streams of one drainage basin into those of another drainage basin determined (127-23, 148+561). Eminent Domain, ¶1, 13, 66; Navigable Waters, ¶34.

6247. Use of public roads—Restriction—

Moving a house along a village street is not using the street for the purpose of ordinary travel, and the requirement that a telephone company shall locate its lines so as not to interfere with the safety and convenience of "ordinary travel" does not make it the duty of the company to remove its wires from the street to permit the passage of a house along the same (132-110, 155+1075, L. R. A. 1916C, 1249). Municipal Corporations, ¶703(1); Telegraphs and Telephones, ¶10(2).

The license conferred by this section is not exclusive of the rights of the abutting owners, but the rights of each must be exercised so as not to interfere with the rights of the other. A telephone company must exercise due care not to injure trees growing on the street (122-424, 142+807). Telegraphs and Telephones, ¶10(15), 15(2).

A telephone company held not to have complied with its franchise, so that such franchise was subject to forfeiture (126-90, 147+712). Telegraphs and Telephones, ¶23.

TELEGRAPH AND TELEPHONE COMPANIES**6256. Telegraph companies common carriers—**

This section and § 6259 are to be construed together (133-252, 158+247).

The rule of law sustaining contracts fixing the value of property transported by a common carrier cannot be applied to uphold a contract fixing the "value" of a telegraph message, since such a message has no ascertainable value, and such a contract is violative of this section and § 6259, post (133-252, 158+247). Telegraphs and Telephones, ¶54(6).

6259. Liability for damages—

This section is to be construed with § 6256 (133-252, 158+247).

Where plaintiff, in Minnesota, was requested to go to Spokane, Wash., and on arrival at Glendive, Mont., telegraphed to Spokane that he would arrive at Spokane at a stated time, failure to deliver such telegram was not governed by this section, but by the Montana law (126-122, 147+961, 52 L. R. A. [N. S.] 1180). Telegraphs and Telephones, ¶27.

The rule of law sustaining contracts with common carriers fixing the value of goods transported cannot be applied to uphold a contract fixing the "value" of a telegraph message, since a telegram can have no ascertainable value, and such a contract, is violative of this section, construed with § 6256, ante (133-252, 158+247). Telegraphs and Telephones, ¶54(6).

At common law a failure to deliver a telegram will not warrant recovery of special damages, where there is nothing in the language of the message to indicate that damage will result from failure to deliver (126-122, 147+961, 52 L. R. A. [N. S.] 1180). Telegraphs and Telephones, ¶67(2).

BOOM COMPANIES**6263. Corporations for driving logs—Powers and duties—Tolls—Liens—**

A corporation constructing a log dam has a right to the use of the waters for transportation purposes superior to that of the riparian owners for power purposes, the proper use being measured by what is reasonably required to transport with ordinary diligence by the customary methods (127-490, 150+218). Navigable Waters, ¶22(3).

The rights of mill and other riparian owners upon navigable waters are subordinate to the right of the state to improve a river for navigation, and the rights conferred upon logging corporations organized under this section with the limitation that the rights so conferred must be exercised in a reasonable manner and so as not to unnecessarily injure riparian rights (127-8, 148+517). Navigable Waters, ¶39(2).

CEMETERY ASSOCIATIONS**6286. Exemption from taxation, etc.—**

The provision of this section exempting cemetery associations from assessments for local improvements is not unconstitutional (134-441, 159+962). Municipal Corporations, ¶407(1, 2).

6288. Descent of lots—Upon the death of a lot owner, such lot, unless otherwise disposed of as provided in Section 6289, shall descend as follows:

1. To the surviving spouse of decedent.
2. If there be no living spouse, then to the eldest living son or [of] decedent.
3. If there be no living son, then to the eldest living daughter.
4. If there be no living daughter, then to the youngest brother of decedent.
5. If there be no living brother, then to the youngest sister of decedent.
6. If there be no surviving spouse, son, daughter, brother, or sister of decedent, then to the association in trust for the uses of a burial lot for the decedent and such of his relatives as the trustees shall deem proper. But such association, or, with its consent, any person to whom such lot shall so descend, may grant and convey the same to any one of decedent's sons, daugh-

ters, brothers, sisters, or grandchildren, and such grantee shall thereafter be deemed the owner thereof. (Amended '15 c. 233 § 1)

6289. Right of disposal—Any owner of a cemetery lot may dispose of the same by will to any one of his relatives who may survive him, or to such cemetery association, in trust, for the use and benefit of any person or persons designated in said will; but no such lot shall be affected by any testamentary devise unless the same be specifically mentioned in the will. Any owner of a cemetery lot may in his lifetime convey said lot to said association in trust for the use and benefit of any person or persons named in the trust conveyance. Such conveyance may contain such conditions, provisions and covenants as the parties may therein agree upon. No interment shall be made in any such lot, except by written consent of the association, of the body of any person who was not, at the time of death, the owner thereof, or a relative of the owner by blood or marriage. Every such association shall keep a record of all deeds, conveyances, judgments, decrees or other documents affecting the title to lots in such cemetery, copies of which, certified by the secretary, shall be received in evidence by the courts. (Amended '15 c. 233 § 2)

6292. Care and improvement fund—Any cemetery association formed under the provisions of law and having a board of trustees or directors, not less than three in number, which shall have established and shall be maintaining a cemetery of not less than one-half acre in area, may by a two-thirds vote of such trustees or directors of such association, which vote may be taken at any regular meeting of such board, provide, in accordance with this act and the provisions of law in the statutes provided, for the establishment of a permanent fund, the income whereof shall be devoted to the care, maintenance and improvement of such cemetery which shall be known as "permanent care and improvement fund" of such cemetery association. ('05 c. 197 § 1, amended '15 c. 345 § 1)

[6315—]1. Associations maintaining cemeteries in cities of first class—Amendment of certificate—Resolution—The board of trustees of any cemetery association organized under the laws of this state which has established and is now maintaining a public cemetery in any city in this state having a population of more than fifty thousand inhabitants may by resolution duly adopted by at least a two-thirds vote of its members at any authorized meeting of said board, amend its certificate or articles of incorporation in any or all of the following particulars:

(1) By providing for a board of associates, the number composing such board, the time and manner of their election and by whom they shall be elected, their term of office, their powers and duties and for the division of such board into classes, if it is so desired, with respect to the time for which they shall severally hold office.

(2) By specifying the names and addresses of the members of the first board of associates and their term of office.

(3) By providing that the management of the affairs of the said association may be vested in a board of not more than nine trustees and that such trustees may be divided into classes in respect to the time for which they shall severally hold office, or, if it is so stated, that only one trustee need be elected each year.

(4) By providing the time and manner of election of the trustees and specifying whether such trustees shall be elected by the owners of lots in the cemetery of such association, either from among themselves or from among the board of associates, or by the existing trustees from among lot owners or from among a board of associates, or by the board of associates from their own number or from the retiring trustees.

(5) By providing that any vacancy in the board of trustees, caused by death, resignation or otherwise, may be filled by the board of trustees for the unexpired term.

(6) By specifying the names and addresses of the first board of trustees and the time for which they shall severally hold office.

(7) By providing that the trustees may elect officers of the association and that the duties of such officers may be defined by the by-laws.

(8) By providing that the trustees may adopt by-laws and promulgate rules and regulations with respect to the cemetery of such association.

(9) By any other lawful provision defining and regulating the powers or business of such association and the powers and duties of its officers, trustees, associates and lot owners. ('15 c. 304 § 1)

[6315—]2. Same—Resolution, how certified and recorded—The trustees shall cause such resolution to be embraced in a certificate duly executed and acknowledged by its president and secretary or other presiding and recording officers under the corporate seal of said corporation, which said certificate shall be recorded in the office of the Register of Deeds of the county in which the cemetery of such association is located and in the office of the Secretary of State. ('15 c. 304 § 2)

[6315—]3. Same—Applicable to what cemeteries—This act shall not apply to private cemeteries nor to cemeteries established by religious corporations. ('15 c. 304 § 3)

[6315—]4. Same—Applicable in what cities—This act shall also apply to cemetery associations mentioned in section 1 of this act [6315—1] maintaining such cemeteries in cities existing under a charter framed pursuant to section 36 of article IV of the constitution. ('15 c. 304 § 4)

[6315—]5. Associations maintaining cemeteries in cities of first class—Care and improvement fund—Any cemetery association organized under the laws of this State which shall have established and shall be maintaining a public cemetery of five acres or more in extent in any city of this state having a population of more than fifty thousand inhabitants, may by a resolution adopted by a vote of at least two-thirds of the members of its board of trustees at any authorized meeting of said board, provide for the creation and establishment of a permanent fund, the income whereof shall be devoted to the care, maintenance and improvement of such cemetery, which fund shall be known as "Permanent Care and Improvement Fund" of such cemetery association. ('17 c. 95 § 1)

[6315—]6. Same—Trustee of fund—Trust companies, etc.—The board of trustees of any such association shall by a resolution adopted by a vote of at least two-thirds of its members designate and appoint one or more trust companies organized under the laws of this state or a board consisting of at least three individuals to act as trustee or trustees of said fund. In case more than one trust company shall at any time be so designated and appointed the said board of trustees shall from time to time apportion all moneys available for said fund between said trust companies in such proportion as such board by said vote may direct or determine. Such designation and appointment shall be evidenced by a written instrument duly executed by the proper officers of such association under its corporate seal. Each trust company and individual so designated and appointed shall qualify as such trustee by filing its or his written acceptance of such designation and appointment with the secretary of the association. All instruments of designation and appointment, and any revocation of the same, and said written acceptances shall be recorded at length by the secretary of the association in its corporate records. The appointment of any such trustee may be revoked by the board of trustees of the association at any time by a vote of two-thirds of its members. No trustee of such fund shall be liable as such except for neglect or wilful default in the discharge of its or his duties. ('17 c. 95 § 2)

[6315—]7. Same—Moneys to be paid into fund—Whenever such cemetery association shall have established such fund as herein authorized, then not less than twenty per cent. of the proceeds of all sales of cemetery lots shall be paid over on the first days of January, April, July and October of each year to the trustee or trustees of said fund, and such payments shall thereafter become a part of such permanent care, and improvement fund. Any other income or funds not required by such association for other purposes may from time to time be added to said fund by a vote of at least two-thirds of the members of the said board of trustees of the Association. ('17 c. 95 § 3)

[6315—]8. **Same—Principal, how invested—Income, how used—Compensation—**The principal of such permanent care and improvement fund shall forever remain intact and inviolable and shall be invested by the trustee or trustees in same class of securities only in which savings banks are authorized by the laws of this State to invest their funds. The trustee or trustees of such funds shall at least semi-annually turn over to the association the entire net income arising from such fund, which income shall be used by such association solely for the care, maintenance and improvement of the cemetery and the avenues leading thereto; but in case any portion of such income shall not be expended or appropriated by the association for the period of one year after the same has been received by it, it shall be turned back to the trustee or trustees and invested by it or them as a part of the principal of said fund. No trustee or board of trustees shall receive as compensation for acting as such any sum in each year in excess of five per cent of the income derived from the fund in its hands. ('17 c. 95 § 4)

[6315—]9. **Same—Annual report—**Any trust company or board of trustees acting as trustees pursuant to the terms hereof shall on the first day of each year make a full and complete report in writing to the association of the condition and state of the fund in its hands, which report shall at all times be open to the inspection of all owners of lots in such cemetery. ('17 c. 95 § 5)

[6315—]10. **Same—Resignation or removal of trustee—New appointment, etc.—**Upon the resignation or removal of any sole trustee or individual appointed pursuant to the authority hereby conferred, the board of trustees of such association shall forthwith appoint a successor; and thereupon the trustee so resigning or removed shall immediately turn over to such successor all property of every description belonging to or appertaining to such fund. Upon written notice to it by such board of trustees of such association of the resignation or removal of any such trustee, or of any application to the court for an accounting by, or removal of, any such trustee, any bank, trust company, safety deposit company or other corporation, institution or individual having in its or his possession any of the moneys, securities, papers or other property belonging or appertaining to such fund, shall thereupon refuse payment or delivery of the same or any part thereof to the trustee or trustees named in such notice, or upon its or their check or other authorization, except upon a check or other authorization for the transfer, surrender or delivery of the same or any part thereof to its or his successor or successors. ('17 c. 95 § 6)

[6315—]11. **Same—Power of district court—**The district court for the judicial district in which the trust estate is situated shall have the power, for good cause shown, upon the application of one or more trustees of such association or of any other interested party to remove any trustee or trustees of such fund, or to compel an accounting by any trustee of such fund, and such court shall have all the powers now or hereafter conferred by law upon district courts for the enforcement, execution, or regulation of express trusts. ('17 c. 95 § 7)

[6315—]12. **Same—What associations bound by act—**Every cemetery association mentioned in section 1 of this act [6315—5] which has heretofore created and established such permanent care and improvement fund pursuant to any law of this state shall with respect to such fund comply with and be bound by the terms of this act. ('17 c. 95 § 8)

[6315—]13. **Same—Sections not applicable—**Sections 6292, 6293, 6294, 6295, 6296, 6297, 6298, 6299, 6300 of the General Statutes of Minnesota, 1913, shall not apply to or be operative upon, cemetery associations mentioned in section 1 of this act [6315—5]. ('17 c. 95 § 9)

[6315—]14. **Same—To what cemeteries not applicable—**This act shall not apply to cemeteries established by religious corporations, nor to private cemetery associations. ('17 c. 95 § 10)

[6315—]15. **Same—In what cities applicable—**This act shall also apply to cemetery associations mentioned in section 1 of this act [6315—5], maintaining such cemeteries in cities existing under a charter framed pursuant to section 36 of article IV of the constitution. ('17 c. 95 § 11)

FINANCIAL CORPORATIONS

GENERAL PROVISIONS

[6338—]1. **Membership of banks and trust companies in Federal Reserve Bank—**Any incorporated state bank or trust company may become a member of the Federal Reserve Bank of the Federal Reserve district in which said bank or trust company is located and may invest in and hold stock therein. ('15 c. 28 § 1)

6340. **Unlawful use of certain words, etc.—**No individual, co-partnership or corporation other than a savings bank or safe deposit and trust company subject to and complying with all the provisions of law relating to such bank or safe deposit and trust companies respectively, shall in any manner display or make use of any sign, symbol, token, letterhead, card, circular, or advertisement stating, representing or indicating that he, it, or they, are authorized to transact the business which a savings bank, safe deposit or trust company usually does, or under said provision are authorized to do; nor shall any such individual, co-partnership or corporation use the words "savings" or "trust" or "safe deposit" alone or in combination in title or name or otherwise or in any manner solicit business or make loans or solicit or receive deposits or transact business as a savings bank or safe deposit or trust company. Except that a state bank, or trust company, regularly incorporated and authorized to do business under the laws of this state, may establish and maintain a savings department under the supervision of the superintendent of banks, and may solicit and receive deposits in said savings department and advertise the same as such, and every such trust company having a savings department may use in its name or title in addition to the word "trust," the words "savings" or "savings bank." Savings deposits received by any such trust company using the words "Savings" or "Savings Bank" in its name or title shall be invested only in authorized securities as defined by law and such trust company shall keep on hand, at all times, such securities as deposits in savings banks may be invested in to an amount at least equal to the amount of such deposits and these securities shall be the representative of and the fund for, applicable first and exclusively to the payments of, such savings deposits. Deposits received by such trust company subject to its right to require notice of withdrawal evidenced by pass books shall be deemed savings deposits.

Every individual, co-partnership or corporation which shall violate any of the provisions of this section shall forfeit to the state the sum of one hundred dollars for every day such violation shall continue. (Amended '15 c. 236 § 1)

BANKS

6357. Shall not lend on or purchase its own stock—

The time within which a bank is required to sell shares of its stock which have been taken as security under this section commences to run from the date the stock is so acquired, and not from the due date of the secured obligation (134-272, 159+567). Banks and Banking, §91.

The failure of a bank to sell and dispose of its own stock taken as security within the time fixed by this section renders the security invalid as to creditors or purchasers subsequently acquiring rights thereto from or through the owner of the stock. The state has no interest in the subject-matter, and the taking of security under this section is not an ultra vires act (134-272, 159+567). Banks and Banking, §101.

6361. **Reserve—**It shall always keep a reserve equal to fifteen per centum (15%) of its demandable liabilities and five per centum (5%) of its time deposits if located in a reserve city, if not located in a reserve city it shall always keep a reserve equal to twelve per centum (12%) of its demandable liabilities and five per centum (5%) of its time deposits; one quarter of which

shall be cash, including specie, legal tender, national bank notes and federal reserve bank notes. The remainder may be in balance due from solvent banks. No bank shall act as reserve agent for another without the approval of superintendent of banks, if its capital and surplus is less than twenty-five thousand dollars. Whenever its reserve shall become impaired, it shall make no new loans or discounts except upon sight bills of exchange, nor declare any dividend until the same has been fully restored. The term "Reserve City" as used herein shall be taken to mean such cities as are designated as reserve cities by act of congress or other federal authority. (Amended '15 c. 362 § 1)

6365. Stock unpaid or impaired—

The directors of a state bank have no inherent authority to make an assessment upon the capital stock to cover a deficiency arising from the impairment of the capital; and such assessment can be made only under a direction of the bank examiner, as authorized by this section (125-263, 146+1093). Banks and Banking, ~~§~~43.

The action of the bank examiner held an informal, but sufficient, direction that the amount of a prior irregular assessment be collected and applied to restore depleted capital (125-263, 146+1093). Injunction, ~~§~~21.

6367. Assessment, how enforced—

Cited (125-263, 146+1093).

SAVINGS BANKS

6393. Authorized securities—The trustees of any savings bank shall invest the moneys deposited therein only as follows:

1. In the bonds or other interest bearing obligations of the United States, or in securities for the payment of which and interest thereon the faith of the government is pledged.

2. In the bonds of any state which has not defaulted in the payment of any bonded debt within ten years prior to the making of such investment.

3. In the bonds of any county, city, town, village, school, drainage or other district created pursuant to law for public purposes in Minnesota, or in any warrant, order, or interest bearing obligation issued by this state, or by any city, city board, town or county therein, provided that the net indebtedness of any such municipality or district, as net indebtedness is defined by Revised Laws 1905, section 777 (1848), and its amendments, shall not exceed ten per cent of its assessed valuation, or in the bonds of any county, city, town, village, school drainage or other district created pursuant to law for public purposes, in Iowa, Wisconsin and North and South Dakota, or in the bonds of any city, county, town, village, school district, drainage or other district created pursuant to law for public purposes, in the United States, containing at least 3,500 inhabitants; provided that the total bonded indebtedness of any such municipality or district shall not exceed ten per cent of its assessed valuation.

4. In notes or bonds secured by mortgages or trust deeds on unencumbered real estate in Minnesota, Wisconsin, Iowa, North Dakota, South Dakota and Montana, worth when improved at least twice and when unimproved at least three times the amount loaned thereon. But not more than seventy per cent of the whole amount of the moneys of the bank shall be so loaned and such investment shall be made only on report of a committee directed to investigate the same and report its value, according to the judgment of its members, and its report shall be preserved among the bank's records.

5. In notes secured by such bonds or mortgages, as the bank under this section is authorized to invest in, but no such bond or mortgage shall be taken as collateral security for more than its par value, nor shall the aggregate amount of securities taken be less than the full amount loaned thereon, and no such loan shall be made for a longer time than one year, nor to a greater amount to any one person than three per cent of the total deposits of the bank. No such bank shall loan in the aggregate, on the security specified in this paragraph, more than one-fourth of its deposits.

6. In the bonds of any railroad company, or the successor of any railroad company, which has received a land grant from the government, and whose bonds are secured by first lien upon its railroad.

7. In the bonds of any other railroad company, which are secured by first lien upon a railroad within the United States, or in the mortgage bonds of any such company, of an issue to retire all prior mortgage indebtedness thereof, or in the bonds of any railroad company in the United States which are guaranteed or assumed by another railroad company within the United States; provided, that the railroad company, except one whose bonds are so guaranteed or assumed, either issuing, guaranteeing, or assuming any of such bonds, has not within five years prior to such investment failed in the payment of a dividend upon its entire capital stock outstanding of not less than four per cent per annum each fiscal year, and has not within such time defaulted in the payment of any part of the principal or interest of any debt incurred by it and secured by trust deed or mortgage upon its road or any part thereof, or in the payment of any part of the principal or interest of any bonds guaranteed or assumed by it. But no such bank shall loan upon or invest in railroad bonds to an amount exceeding in the aggregate twenty per cent of its deposits, nor exceeding five per cent of its deposits in the bonds issued, guaranteed or assumed by any one railroad company.

8. In the debenture stock of any railroad company owning and operating a line of road in whole or in part within the state, provided that such stock shall bear interest at the rate of at least four per cent per annum, and shall be secured by trust deed as a first lien upon such line of railway, and that not more than five per cent of its deposits shall be invested in such stock.

9. In farm loan bonds issued by the federal land bank in the federal land bank district, of which the state of Minnesota is a part, in accordance with the provisions of an act of Congress of the United States of July 17, 1916, known and designated as "The Federal Farm Loan Act."

The term "authorized securities" whenever used in the Revised Laws shall be understood as referring to the securities specified in this section. (Amended '17 c. 88 § 1)

LOCAL BUILDING AND LOAN ASSOCIATIONS

6428. **Capital—Stock—Deposits**—Every such association shall have an authorized capital of at least fifteen thousand dollars (\$15,000). It shall not issue any preferred stock but all stock shall share equally in the profits and contribute equally to the losses and expenses according to its book value. It may issue stock to be paid for either when issued or in installments. Every such association shall be authorized to borrow money for the legitimate purposes of its incorporation in such amounts and under such regulations as may be provided for in its articles of incorporation or by-laws. Provided, that the aggregate amount so borrowed shall not exceed eighty per cent of the assets of said association. (Amended '15 c. 69 § 1)

GENERAL BUILDING AND LOAN ASSOCIATIONS

6437. **Securities deposited with examiner**—Every such association having not less than one hundred thousand dollars paid in cash capital shall at all times keep with the public examiner, a deposit of securities approved by him of at least two hundred thousand dollars as a guaranty fund in trust for its members and creditors. Such securities shall consist of any or all of the first three classes of authorized securities, or of first mortgages on real estate. So long as such deposit be not reduced below two hundred thousand dollars, it may at any time, substitute like securities, and may collect interest and dividends thereon. (Amended '15 c. 170 § 1)

6440. **Kinds of stock prohibited and allowed**—No such domestic association shall issue preferred stock, but may issue different series of stock. It may issue deposit stock upon the terms and conditions provided in the by-laws; installment stock to be paid in periodical sums, which shall mature when the amount so paid with the dividends thereon shall equal its par value; a dividend bearing prepaid stock, upon which a partial dividend may be paid semi-annually out of the full dividend apportioned thereto; and full paid

stock upon which the par value thereof shall be paid in advance, and upon which a full or a definite dividend may be paid, not exceeding the per cent of profits earned by all classes or series of stock at the time when declared, and in the certificate of such stock the right of withdrawal may be waived for a definite time. Such association may issue permanent stock for which the full par value shall be paid at the time of issue, or in such installments as may be provided in its by-laws, and which shall be entitled to dividends not exceeding the per cent of profits earned by all fully participating classes of stock at the time the dividend is declared, to be credited to the stock until the same is fully paid, and afterwards paid in cash. Fully paid permanent stock may upon written approval of the superintendent of banks be retired and cancelled pro rata from time to time, by a majority vote of the stockholders, provided that there shall always remain a paid in cash capital represented by such permanent stock of at least one hundred thousand dollars, which shall not be paid to the holders thereof so long as such association shall have any other legal obligations outstanding. No such association shall issue any certificates of shares until the terms and conditions thereof shall have been approved by the state examiner. (Amended '15 c. 170 § 2)

CERTAIN INVESTMENT COMPANIES

- 6445. Investment companies under control of superintendent of banks—**
132-19, 155+765.
- 6446. Supervision of superintendent—Powers, how exercised—Fees—**
132-19, 155+765.
- 6447. Soliciting business without authority—Penalty—**
132-19, 155+765.

OTHER CORPORATIONS FOR PROFIT

MANUFACTURING CORPORATIONS

6450. Withdrawal of capital—Liability of stockholders—

Manager of corporation intrusted with the transaction of its business affairs is bound by the restrictions imposed on the corporation by its charter and by-laws, and, if he transgresses such restrictions, is liable to the corporation therefor (162+516). Corporations, ¶310(1).

Manager of a corporation who contracted debts in excess of limit prescribed by its charter, whereby it was necessary to dispose of its merchandise at an assignee's sale at a loss, was liable in damages. Where corporation manager contracted debts in excess of charter limitations necessitating sale of corporation's merchandise at a loss, the damage was the difference between market value of merchandise at forced sale and its value for sale in usual course of business (162+516). Corporations, ¶312(1).

Where restriction violated by corporation manager was imposed on corporation by its charter, ultra vires acts of manager could be ratified only by unanimous action of stockholders with full knowledge of facts; and where claims of corporation's creditors appeared to be enforceable, stockholders' recognition of liability did not waive right to hold corporation manager liable for damages from his ultra vires acts in contracting such claims (162+516). Corporations, ¶312(7).

Dividends paid out of capital at a time when the corporation had no profits, and when it owed debts, but was not insolvent, may, on the corporation becoming bankrupt, be recovered by the trustee in bankruptcy for the benefit of creditors whose claims arose after the payment of such dividends; it not appearing that such creditors did not deal with the corporation in reliance on its capital being unimpaired as represented (161+228, L. R. A. 1917C, 390). Bankruptcy, ¶145(1).

Intent of the parties is not an element of a creditor's cause of action under this section (122-441, 142+822). Corporations, ¶229.

[FOR RECLAIMING TIMBER LANDS]

[6452—]1. Formation—Purposes—Any seven or more persons of lawful age, inhabitants of this state and owning not less than 5,000 acres of land, no part of which is distant more than two miles from some other part thereof, who are desirous of developing said land by clearing it or parts of it of timber, brush and stumps and by otherwise preparing the same for agriculture, may form a corporation for that purpose by complying with the conditions hereinafter described. ('17 c. 502 § 1)

[6452—]2. Certificate—Said persons shall subscribe and acknowledge a certificate specifying:

1. The name of said proposed corporation which shall be in this form: "The Reclamation and Development Association" and the place of its principal office.

2. That it is organized to clear, grub and plow and to do all other things necessary to reclaim and put in condition for immediate agricultural use certain described lands now unavailable for such use because of timber and brush thereon.

3. The names and places of residence of the incorporators with a statement of the amount of land owned by each in said development project together with a description thereof.

4. That the management of said corporation shall be vested in a board of five directors, the date of the annual meeting at which said board shall be elected and the names and addresses of those composing the board until the first election.

5. That the indebtedness to which the corporation shall at any time be subject shall not exceed a sum equal to seven dollars for every acre of land included within said project.

6. That no capital stock shall ever be issued but that membership in said corporation shall depend upon ownership of land in said development project.

It may also contain any other lawful provisions defining and regulating the powers or business of the corporation, its officers, directors and members. ('17 c. 502 § 2)

[6452—]3. Filing and record of certificate—The certificate of every such corporation shall be filed for record with the secretary of state who if he finds that it conforms to law shall record the same and certify that fact thereon. After such record such certificate shall be filed for record with the register of deeds of each county in which any of the land included in such project shall be located. No fee shall ever be charged for such incorporation. ('17 c. 502 § 3)

[6452—]4. Publication of certificate—Every such certificate of incorporation shall be published in a qualified newspaper in each of such counties, for two successive days if in a daily or for two successive weeks if in a weekly newspaper. Upon filing with the secretary of state proof of such publication, its corporate organization shall be complete. ('17 c. 502 § 4)

[6452—]5. Powers—Every corporation formed under the provisions of this act shall have power:

1. To have succession by its corporate name for the period of thirty years.

2. To sue and be sued in any court.

3. To have and use a common seal and to alter the same at pleasure.

4. To contract for clearing, grubbing, plowing and otherwise preparing for immediate agricultural use, of land comprised within said project, to acquire by purchase or otherwise personal property to be used in said work, to issue, sell and provide for the payment of the bonds of said corporation, and to do all lawful acts necessary to effect the purposes of its organization, subject to the provisions and limitations hereinafter declared.

5. To elect or appoint in such manner as it may determine all necessary or proper officers, agents, boards and committees, to fix their compensation and to define their powers and duties.

6. To make and amend, consistently with law, by-laws providing for the management of its property, the conduct of its business, and the regulation and government of its officers. ('17 c. 502 § 5)

[6452—]6. Officers—By-laws—The board of directors named in the certificate of incorporation shall, as soon after such incorporation has been perfected as it is practicable, elect from its number a president, a secretary and a treasurer and shall adopt by-laws which shall remain effective until and except as amended by the members at any regular or special meeting thereof. ('17 c. 502 § 6)

[6452—]7. **Voting**—At every meeting of the members of any such corporation each member shall be entitled to one vote in person, or by proxy made within one year, for each acre of land in said development project owned by him in his individual, corporate or representative capacity. ('17 c. 502 § 7)

[6452—]8. **Duties of directors—Limitation of expenditure**—It shall be the duty of the board of directors to clear, grub and plow a portion of the land of each member of said corporation included within such project, said portion to be designated by the owner thereof; but in no case shall a greater amount of money be expended upon any piece of land separately owned than is equal to seven dollars (\$7.00) for every acre in such piece of land; and in no case shall more than twenty-five (25) per cent of any such piece of land separately owned be cleared by said board in the manner herein provided. ('17 c. 502 § 8)

[6452—]9. **Bonds—Submission to members, etc.**—For the purpose of providing funds for clearing, grubbing and plowing such parts of said land as may be determined upon and for acquiring the property necessary to accomplish that purpose and for otherwise carrying out the provisions of this act, the board of directors of any such corporation must, as soon after its organization as may be practicable and whenever thereafter the construction fund has been exhausted by expenditures herein authorized therefrom, and the board deem it expedient or necessary to raise additional money for said purposes, estimate and determine the amount of money necessary to be raised, and shall immediately thereafter call a special election, at which shall be submitted to the members of such corporation, the question whether or not the bonds of said district in the amount as determined shall be issued. Notice of such election must be given by mailing a notice thereof to each member in a securely closed, post paid envelope, addressed to him at his last known place of residence. Such notice must specify the time of holding the election, not less than twenty days after the mailing thereof, the amount of bonds proposed to be issued and the rate of interest proposed to be paid thereon. At such election the ballots shall contain the words, "Bonds" "Yes," and "Bonds" "No" or words equivalent thereto. If a majority of the votes cast are "Bonds-Yes" the board of directors shall cause bonds in said amount to be issued; if the majority of votes cast at any bond election are "Bond-No," the result of such election shall be so declared and entered of record, and whenever thereafter said board in its judgment deems it for the best interests of the districts that the question of issuance of bonds in said amount or any amount, shall be submitted to said members, it shall so declare of records in its minutes, and may thereupon submit such questions to said members in the same manner and with like effect as at such previous election. Such bonds shall be payable in gold coin of the United States in ten series, as follows, to-wit: At the expiration of eleven years, five per cent of the whole number of said bonds; at the expiration of twelve years, six per cent; at the expiration of thirteen years, seven per cent; at the expiration of fourteen years, eight per cent; at the expiration of fifteen years, nine per cent; at the expiration of sixteen years, ten per cent; at the expiration of seventeen years, eleven per cent; at the expiration of eighteen years, thirteen per cent; at the expiration of nineteen years, fifteen per cent; at the expiration of twenty years, sixteen per cent; and shall bear interest at a rate not exceeding six per cent per annum, payable annually, on the first day of January of each year.

The principal and interest shall be payable at the place designated therein. Said bonds shall be each of a denomination of no less than one hundred dollars and not more than five hundred dollars; shall be negotiable in form, signed by the president and secretary and the seal of the board of directors shall be affixed thereto. Each issue shall be numbered consecutively as issued, and the bonds of each issue shall be numbered consecutively, and bear date as of the time of their issue. Coupons for the interest shall be attached to each bond, signed by the secretary. Said bonds shall express on their

face that they were issued by authority of this act, stating its title and date of approval, and shall also state the number of the issue of which said bonds are a part. The secretary shall keep a record of the bonds sold, their number, the date of sale, the price received and the name of the purchaser. ('17 c. 502 § 9)

[6452—]10. Bonds, how sold—The board may sell said bonds from time to time, in such quantities as may be necessary and most advantageous, to raise money for the purpose of clearing, grubbing and plowing said lands and otherwise fully to carry out the objects and purposes of this act. But said board shall never sell such bonds for less than 90 per cent of the face value thereof. ('17 c. 502 § 10)

[6452—]11. Bonds, how paid—Assessments—Said bonds and the interest thereon shall be paid by revenue derived from an annual assessment upon the real property comprised within said project. Each piece of property separately owned shall be assessed in an amount equal to the fraction of the whole amount then necessary to be raised which the labor performed upon said piece of land is of the whole amount of labor performed upon all the land in said project.

The board of directors shall, each year, levy an assessment sufficient to raise the annual interest on the outstanding bonds, and at the expiration of ten years after the issuing of bonds of any issue must each year increase said assessment to an amount sufficient to raise a sum sufficient to pay the principal of the outstanding bonds as they mature. In case of the neglect or refusal of the board of directors to cause such levy to be made as in this act provided any person interested in having such levy made may institute mandamus proceedings in the proper court to compel such levy to be made. ('17 c. 502 § 11)

[6452—]12. Notice of assessment—Duties of treasurer—On or before the fifteenth day of November in each year the secretary shall give notice in writing to each member of said corporation, stating the amount assessed against his property, that such assessment is due and payable, the time and place at which payment of assessment may be made, that it will become delinquent at six o'clock P. M. on the last Monday of December next thereafter, and that unless paid on that date or prior thereto, five per cent will be added to the amount thereof. The treasurer must attend at the time and place specified in the notice to receive assessments and must keep and deliver to the secretary a complete record of all moneys received, by whom paid, for what land and must give receipt for all moneys so received. ('17 c. 502 § 12)

[6452—]13. Assessments to be liens—Priorities—The assessments upon real property and all penalties for delinquencies shall be liens against the property assessed from and after the first day of January for any year next after the same become due and payable and the lien for the bonds of any issue shall be a preferred lien to that for any subsequent issue and such lien is not removed until the assessments are paid or the property sold for the payment thereof. ('17 c. 502 § 13)

[6452—]14. Foreclosure of liens—Redemption—Upon failure to pay any assessment herein provided for when the same shall become due, the board of directors of any such corporation may proceed to enforce such lien in favor of said corporation, and the provisions of law applicable, to the foreclosure of liens given to those who contribute to the improvement of real estate, and the provisions for the redemption for sales made thereunder, shall be followed as nearly as possible in the enforcement thereof. ('17 c. 502 § 14)

[6452—]15. When bonds may be issued—No such corporation shall be entitled to issue bonds except during the first ten years of its existence. ('17 c. 502 § 15)

[6452—]16. Duration of corporation—Every such corporation shall be formed for a period of thirty years, but at the expiration of such period it shall nevertheless continue in existence for three years thereafter for the sole purpose of prosecuting and defending actions, closing its affairs, redeeming

its bonds and disposing of its property; provided, that if all of the bonds of said corporation and all other obligations thereof have been paid before the expiration of the term of its charter, a majority of the members may vote that it be dissolved, whereupon the board of directors shall cause appropriate actions to be taken to effect such dissolution. ('17 c. 502 § 16)

[6452—]17. **Laws applicable**—The general corporation laws of this state shall apply to all such corporations in so far as they are applicable and not inconsistent with the provisions of this act. ('17 c. 502 § 17)

AGRICULTURAL SOCIETIES

STATE AGRICULTURAL SOCIETY

6493. Governing board—Annual meeting, etc.—The management and control of its affairs shall be vested in its president, two vice presidents, and eight other managers, one from each congressional district not represented by a vice president, to be known as its governing board, all of whom shall be citizens of this state, and any six of whom shall constitute a quorum. The annual meeting of such society shall be held at such place in St. Paul or Minneapolis or upon the state fair grounds as the governing board may select. It shall begin on the Wednesday following the second Tuesday in January, and shall continue until the following Friday, on which day a president shall be elected for the term of one year, one vice president for a term of two years and eight managers as follows: at the annual meeting in 1918 and on each third year thereafter one manager from each of the 1st, 3rd and 6th congressional districts; at the annual meeting in 1919 and on each third year thereafter one manager from each of the 7th and 9th congressional districts; at the annual meeting in 1920 and on each third year thereafter one manager from each of the 2nd, 8th and 10th congressional districts; provided that at the first regular meeting of said board held after the passage and approval of this act, the governing board shall appoint one manager from each congressional district not represented on the board by a manager, the managers so appointed to serve until the next following annual election, at which annual meeting in January, 1916, a successor to said appointed manager from the 3rd congressional district shall be elected for a term of three years, and a successor to said appointed manager from the 8th congressional district shall be elected for a term of two years, in addition to the election of successors to managers and officers whose elective terms expire at such meeting, all of which managers shall thereafter be elected for the term of three years; provided further, that at no time shall more than one member of the governing board, exclusive of president, hereinbefore provided for be a resident of any one congressional district. On the day preceding the last day of said annual meeting the duly accredited delegates to said meeting from each congressional district whose member[ship] of said board of managers is about to expire shall meet together at the place for holding said annual meeting and nominate and certify to said annual meeting the choice of such district for such manager, and at the time fixed by law for the election of the president of such society, and after such nominations have been so certified, presented and read to said annual meeting, the said annual meeting shall proceed to elect managers to fill all expiring terms. Vacancies shall be filled by the governing board. Any person appointed to fill a vacancy shall hold office until the next annual meeting of the society which shall elect a successor to serve out the unexpired term. (R. L. § 3681, amended '11 c. 381 § 2; '17 c. 508 § 1)

This section was also amended by 1917 c. 277.

COUNTY AGRICULTURAL SOCIETIES

[6515—]1. **Renewal in certain cases**—Any county agricultural society, which is a member of the State Agricultural society of the state of Minnesota, whose period of duration has expired less than two years before the passage of this act and which has continued to carry on its business without a renewal

of its said period, may renew the period of its corporate existence from the date of expiration of said period of duration for an additional term not exceeding thirty years, with the same force and effect as if renewed before its said period of duration expired, by taking the proceedings provided by law for the renewal of the corporate existence of such corporation in cases where such renewal is made before the end of its period of duration.

Provided, however, that the proceedings to obtain such renewal shall be taken within six months after the passage of this act, and provided further, that this act shall not affect any pending litigation, nor apply to any corporation whose charter has been declared forfeited by the final judgment of any court of competent jurisdiction in this state. ('17 c. 131 § 1)

6516. Aid to societies and associations—All sums hereafter appropriated to aid county and district agricultural societies or associations, shall be distributed equally to the senior active county agricultural society or association in each county, except where there be two of the same age, in which case the portion due such county shall be divided pro rata between them according to the premium paid, and to the Northwestern Minnesota Fair Association, the Mankato Fair and Blue Earth County Agricultural Association, Morrison County Co-operative Agricultural Society, the Faribault Agricultural and Fair Association, the Park Region Agricultural Association, the Farmers Co-operative Agricultural Society of Waconia, Traverse County Agricultural Association of Wheaton, and the Tri-County Fair Association of Winona, the Hubbard County Agricultural Association, the Cannon Valley Agricultural Association and the Scott County Good Seed Association, when not receiving specific state appropriations, pro rata, to be paid out in premiums at the fairs of only such society or association as have an annual membership of twenty-five or more, maintain an active existence, hold annual fairs on enclosed grounds owned or leased by such societies and associations, to which a fixed charge of admission is made; provided that they shall have paid out in premiums to exhibitors during the year as much as they received from the state, and provided further that no such county or district agricultural society shall receive in any year from the state, for the purpose of reimbursing it for the amount of premiums paid at its fairs, a sum in excess of fifteen hundred (\$1,500.00) dollars. All payments made hereunder shall be made on or before December 20th of the year in which the fair is held, upon the filing with the state auditor on or before December 15th of each year a sworn statement showing the holding of annual fairs and the payment in premiums of the amounts claimed from the state, or that such society or association has advertised an annual fair, and has been prevented for good cause from holding the same, and has incurred expense in such advertising and preparation for the sum equal to the amount claimed from the state. District agricultural societies embracing two or more counties, not having county agricultural societies, shall be entitled to share in such pro rata distribution, subject to the same conditions as county agricultural societies. Any county or district agricultural society which may have held its second annual fair shall be entitled to share, pro rata, in such distribution. The state auditor shall certify to the secretary of the State Agricultural Society, on or before January 5th of each year, a list of all county and district agricultural societies that have complied with this act, and which are entitled to share in such appropriation. All payments hereunder shall be made on or before December 20th of the year in which the fair is held, provided, however, that in determining the amount to be paid to any society or association under this section, the state auditor shall exclude all payments made by such society or association as premiums or purses for or in horse races, ball games and amusement features of any nature. (Amended '15 c. 243 § 1)

6517. County lands may be leased, when—Any county board of any county may lease to agricultural societies established and existing in its county for such period and on such terms as it shall deem expedient any lands of the county including any portion of lands of the county used as a poor farm, to be used by such society for fair purposes. Said society may construct on such

leased land, suitable buildings, race tracks and other improvements, provided that in case of the leasing by said county board of any county of lands, previously set aside as a poor farm such improvements shall be constructed according to a plan previously submitted to said county board and approved by them, and provided further that during all times when such leased land is not used for fair purposes, said lands shall be and remain under the supervision and control of said county board or such overseer as may be appointed by such board. (Amended '15 c. 346 § 1)

SOCIAL AND CHARITABLE CORPORATIONS

GENERAL PROVISIONS

6522. For what purposes formed—Any three or more persons may form a corporation for any one or more of the following purposes, viz.: Religious, social, moral, educational, scientific, medical, surgical, benevolent, charitable, fraternal or reformatory purposes, including care of the sick, aged and disabled and ministering to the needs of the poor; providing comfort, education and recreation for all classes; for establishing, maintaining and operating clinical, pathological, medical or surgical research laboratories, hospitals, institutions of learning and gymnasiums, and otherwise for improving the physical, mental and moral condition of mankind; for advancing, promoting and administering charitable and benevolent aims in its own behalf, or as the agent, trustee or representative of others; for aiding and assisting individuals, corporations, associations or institutions now, or hereafter, engaged in furthering any one or more of the purposes above named, and establishing, promoting, maintaining, endowing and aiding with its own means, or as the agent, trustee or representative of others, any such corporation, association or institution; for providing, erecting, owning, leasing, furnishing and managing any building, hall or apartments for the use, in whole or in part, of any society, societies, body or bodies, incorporated or unincorporated, organized for any one or more of said purposes; or for the purpose of improving or beautifying any public roads, streets, grounds, parks, water or water fronts, provided that any such improvements shall be carried out under the supervision of the public official, or officials, having charge or control of public property to be so improved. (Amended '17 c. 274 § 1)

This section was also amended by 1915 c. 185.

Section 3862, requiring the guarding of dangerous machinery, applies to associations organized under this section (122-10, 141+837, 46 L. R. A. [N. S.] 548). Charities, ~~§~~ 45(2).

6527. Power as to property—Every such corporation, in addition to its other powers, may receive or acquire by purchase, gift, grant or devise, and may hold, use, invest, expend, convey or dispose of any real or personal property whatever for any of the purposes for which the corporation may be created, and may lease, mortgage or use the same in any manner deemed most conducive to its interests and prosperity and to the accomplishment of any such purposes; but it shall not divert any gift, grant, devise or bequest from the specific purpose or purposes designated by the donor without his or her consent; but if so authorized by a donor, the corporation may expend, use or dispose of any property transferred to it, or the income thereof, in accordance with the judgment and discretion of its trustee, directors or officers; but no street, road or alley shall be established, opened or extended through or upon any lands not exceeding ten acres in area upon which a hospital building, incorporated as such, is situated, except with the consent of the managing board of such hospital. The provisions of this section shall be applicable to any existing corporation of the character authorized to be created by section 6522 of the General Statutes of 1913 as well as to any corporation hereafter organized in pursuance thereof. (Amended '17 c. 274 § 2)

CHAMBERS OF COMMERCE, ETC.

6537. Chambers of commerce and boards of trade—
130-288, 153-617.

SOCIETIES FOR SECURING HOMES FOR CHILDREN

6542. Powers of such societies—Every such society may receive and become the legal guardian of any resident child under ten years of age, who is grossly ill-treated, or who has been abandoned, or is without a home, or surrounded by bad or immoral influences. It may contract in writing with any person who, after ninety days' trial, shall take, without adopting, any such child, for its proper care until sixteen years of age if a girl, and eighteen if a boy. Such contract shall also specify the amount to be paid to such child at the expiration thereof, but shall contain no provision for its political or sectarian training or education. Such contract shall not interfere with the adoption of said child according to law. (Amended '17 c. 221 § 1)

CORPORATIONS FOR MAINTAINING HOMES FOR DEPENDENT CHILDREN

6549. Incorporation—A corporation may be formed under the provisions of this act, by not less than three persons, for the purpose of establishing and maintaining homes for dependent children, for the receiving of such children into said homes, the care and supervision of said children and the conduct of said homes; and for the purpose of securing homes in private families, by the adoption or otherwise, for orphans, homeless, abandoned, neglected or grossly ill-treated children. Such incorporators shall file with the Secretary of State their certificate of incorporation which shall declare and state:

1. Its name and principal place of business.
2. That it is organized to establish and maintain a home for dependent children and for the custody and supervision of said dependent children in said home and to find and secure homes in private families by adoption or otherwise for orphans, homeless, abandoned, neglected or grossly ill-treated children.
3. The names and places of residence of the incorporators, and how and when their successors may be appointed and elected.
4. The names of the first board of directors or managing officers and in what officers or persons the government of the corporation and management of its affairs shall be vested and how and when they shall be elected or appointed; and any other provisions not inconsistent with law that may be desired. ('13 c. 314 § 1, amended '15 c. 61 § 1)

6550. Powers, etc.—The persons so executing said certificate and their successors shall thereupon become a corporation by the name specified therein with all the powers of a common law corporation. It may sue and be sued by its corporate name, have perpetual succession, adopt a corporate seal, and change the same at pleasure. It may in its corporate name acquire and receive, by purchase, gift, grant, devise, and bequest, any property, real, personal or mixed and the same hold, sell, convey, assign, loan, lease, or otherwise use for the purposes named in its certificate of incorporation, and for such time and in such manner as may be directed by any grantor or testator who may make a gift, devise or bequest to such corporation, to be administered and used as provided in this act; and it shall have no power to divert any gift, grant or bequest from the specific uses and purposes designated by the donor or testator. Such corporation shall have no capital stock; and any court of equity, on its own motion or upon application, may have and exercise visitatorial powers over its officers and affairs. Every such corporation so formed may receive and become the legal guardian of any resident child under twelve years of age, who is grossly ill-treated, or who has been abandoned, or is without a home or surrounded by bad or immoral influences. It may contract in writing with any person who, after sixty days' trial, shall take, without adopting, any such child, for its proper care until sixteen years of

age, if a girl, and eighteen years of age if a boy; such contract shall specify what amount, if any, is to be paid to such child at the expiration of such period, but shall contain no provision for its political or sectarian training, or education. Such corporation shall keep careful supervision of all children placed by it, and except in case of legal adoption, shall require from persons taking them a full report of their condition and welfare at least once a year; and its agents shall have the right to visit such children and personally investigate their conditions as often as may be deemed desirable. If such corporation become satisfied, upon due investigation, that the influence of any home is harmful, or the treatment of the child is unduly severe or inconsiderate, it may require, through its board of directors or managing officer, the return of such child to the main office of such corporation, at the expense of the family having it. ('13 c. 314 § 2, amended '15 c. 61 § 2; '17 c. 232 § 1)

6551. Rights, etc.—Said corporation shall have supervision over all children received by it as provided in this act and shall have a right to be appointed by the proper court and to act as guardian of any of said children. Said corporation and all its property, person [personal], real and mixed, shall be exempt from taxation. Said corporation shall have all the powers and rights now conferred upon the governing body of cities, counties, towns and villages by Section 3122, Revised Laws 1905 [6546], and may exercise the powers and rights as provided in said Section 3122 [6546]; and may have children committed to said home by the Probate Court and may receive the same in the same manner as provided in Sections 3122, 3123 and 3124, Revised Laws, 1905 [6546-6548]. ('13 c. 314 § 3, amended '15 c. 61 § 3)

RELIGIOUS CORPORATIONS

[6594—]1. Certain conveyances to churches legalized—That in all cases where real estate has been conveyed to a church within one year prior to the execution and recording of the certificate of incorporation of such church, as provided for in Sec. 6594 of General Statutes of Minnesota, for 1913 and where such certificate and deed, or deeds of real property to such church has been heretofore actually recorded in the office of the register of deeds in the county where such land is situated, such deeds and certificates of incorporation and the recording thereof are hereby legalized and confirmed and such corporation is hereby deemed to have been duly and legally incorporated, notwithstanding the fact that no proof of the posting of the notices, for the meeting at which the certificate of such church corporation was executed and such church incorporated, was ever filed or recorded in the office of the said register of deeds with such certificate of incorporation, provided such certificate recites that such notices were in fact duly posted. ('15 c. 249 § 1)

[6594—]2. Same—Evidence.—Provided further that duly authenticated copies of such certificates of incorporation and deeds to such corporation may be read in evidence in any court within this state with the same force and effect as such records thereof.

Provided further that nothing in this act shall be held to apply to any action heretofore commenced or now pending in any of the courts of this state. ('15 c. 249 § 2)

6598. Sale of real estate—"Society" defined—

Evidence held to sustain findings that deeds executed by plaintiff church to defendant church were executed without authority and were a fraud upon plaintiff and its members (126-282, 148+271). Religious Societies, ¶20.

Members of a church, who adopt a faith inconsistent with the orthodox doctrines of the church, and assume to appoint a minister of the new faith and to appropriate the church property for the purposes of the new faith, will be restrained at the suit of members who adhere to the faith as originally established (131-203, 154+969). Religious Societies, ¶21, 22, 23(3).

[6609—]1. Incorporation of cathedrals for Protestant Episcopal Church—Certificate—Any cathedral for which a constitution and statutes have heretofore been, or may hereafter be, adopted by the diocesan convention of any

diocese in this state of the Protestant Episcopal Church in the United States of America may form a corporation as follows:

Such cathedral shall cause to be prepared a certificate containing:

1. The name and location of the cathedral.
2. The persons who constitute the chapter of the cathedral, and their names, of which chapter the bishop of the diocese and the wardens and vestrymen of the cathedral congregation shall be members.
3. The date of the adoption by the diocesan convention of the constitution and statutes of the cathedral.
4. Said certificate shall be signed and duly acknowledged by the bishop of the diocese and by a majority of the members of the chapter, and shall be filed for record in the office of the register of deeds of the county in which such cathedral is located, and in the office of the Secretary of State of the State of Minnesota. ('15 c. 46 § 1)

[6609—]2. **Same—Powers**—Upon the signing, acknowledging and filing such certificate for record with the register of deeds of the county of its location, and with the Secretary of State of the State of Minnesota, such cathedral shall become a corporation by the name specified in its certificate, and by and through its chapter may transact all the business of said cathedral; and in its corporate name may acquire or receive by purchase, gift, grant, devise or bequest, any property, real, personal or mixed, and hold, sell, transfer, mortgage, convey, loan, let, or otherwise use the same for the use and benefit of said cathedral, provided that such use shall not contravene the laws and usages of the Protestant Episcopal Church in the United States of America of this state; but it shall not have power to divert any gift, grant or bequest from the purpose specified in writing by the donor or deviser, nor to sell, convey or mortgage its church or church site, except with the consent of the bishop in writing and when first authorized to do so at a meeting of the chapter called for that purpose, nor in contravention of the canons of the diocese or of the general convention of the Protestant Episcopal Church in the United States of America. ('15 c. 46 § 2)

[6609—]3. **Same—Chapter, how governed**—The chapter of said cathedral shall be governed by the constitution and statutes which have been adopted for it by the diocesan convention and any amendments made thereto as provided therein. ('15 c. 46 § 3)

[6615—]1. **Consolidation of parishes, congregations and churches**—Any diocesan council, synod, presbytery, conference, association, consociation, or other general organization for ecclesiastical or religious purposes composed of or representing several parishes, congregations, or particular churches, and incorporated under the laws of this state, may unite or consolidate with one or more other diocesan councils, synods, presbyteries, conferences, associations, consociations, or other general organizations for ecclesiastical or religious purposes, or may with one or more such other societies form one new society for ecclesiastical or religious purposes, and when any such united or consolidated society, or any such new society, shall have been incorporated, may convey and transfer its property to such corporation according to law. ('17 c. 107 § 1)

[6615—]2. **Same—Procedure for incorporation**—Any two or more societies of the classes named in the preceding section may form a corporation by adopting a canon or resolution and having a copy thereof certified, verified, approved by the attorney general and recorded as provided by sections 3152 and 3153, Revised Laws of Minnesota, 1905 [6612, 6613]. The canon or resolution may be adopted in joint session by representatives, delegates and others entitled to vote at the regular meetings of such societies, respectively, for the year in which such canon or resolution is adopted or may be adopted in joint session by committees of such societies, elected or appointed by them respectively for that purpose. ('17 c. 107 § 2)

[6615—]3. **Same—Franchises, powers, privileges, etc.**—Every corporation formed as in this act provided, shall have the same franchises, powers,

privileges and immunities as corporations organized and existing under sections 3152 to 3153 inclusive of Revised Laws of Minnesota, 1905 [6612, 6613]. ('17 c. 107 § 3)

[6615—]4. **Same—Property**—Every corporation organized under this act shall hold all property conveyed or transferred to it for such use, and subject to such trusts and conditions as such property is held by the corporation conveying or transferring the same. ('17 c. 107 § 4)

ACTIONS RESPECTING CORPORATIONS

6630. Mode of prosecution—

Receivers of a foreign corporation may sue in this state on claims due the corporation, where they are authorized to sue by the appointing court, and it does not appear that there are domestic creditors who would be prejudiced by the maintenance of the action. Such receivers were entitled to sue in this state, though they were appointed by a federal court (122-250, 142+315). Corporations, ¶685.

6632. Power of court over corporation officers—

Subd. 8—Notice of special meeting of fraternal benefit council held legally called within the contemplation of the constitution of the order (122-73, 141+1107, Ann. Cas. 1914D, 856). Beneficial Associations, ¶14.

6634. Sequestration—Order of distribution—

132-9, 155+754.

A sale by a receiver of all the assets of a corporation under order of court held proper, and not improvidently ordered (134-442, 159+948). Corporations, ¶560(5).

Section 7892, subds. 3 and 4, do not limit the authority of the court in the appointment of receivers for corporations to the instances provided for in this section, but recognize the general equity powers of the court to appoint receivers for corporations when proper grounds are made to appear (134-442, 159+948). Corporations, ¶553(1).

By admitting all the allegations of the complaint in its answer and expressly consenting to the appointment of a receiver, the corporation waives the prerequisites as to rendition of judgment and return of execution unsatisfied, and appellant having acquiesced for two years in the action of the corporation and its receiver, cannot question the jurisdiction of the court in making the appointment (134-442, 159+948). Corporations, ¶554, 555.

A complaint, though failing to allege that defendant corporation has property in the state, has ever issued stock, is insolvent, has refused to apply its property in satisfaction of plaintiff's judgment, or that plaintiff is a resident of the state and has secured in regular course a judgment against defendant, held sufficient to authorize the appointment of a receiver under this section (161+401). Corporations, ¶684.

Rights of stockholders as to dismissal of action in which corporation is interested. Rights of stockholder to maintain action on behalf of corporation (122-355, 142+818, Ann. Cas. 1914D, 830). Corporations, ¶204, 206(5), 212.

The court may, under this section, sequester the property within the state of a foreign corporation, and appoint a receiver thereof (161+401). Corporations, ¶688.

6637. Hearing—Notice—Record—Upon the presentation of such petition, the court shall fix a time and place for hearing thereon and order three weeks' published notice thereof to be given and such other notice to parties interested as it may deem proper. At the time and place so fixed the court shall hear the allegations and evidence of all parties interested and, if any of the grounds specified in the petition is sustained, shall adjudge the corporation dissolved and appoint a receiver to close its affairs.

A certified copy of the order or judgment of dissolution shall be filed for record with the secretary of state and thereafter with the register of deeds of the county of the principal place of business of said corporation and the dissolution of said corporation shall not be deemed complete until such copy is so filed for record. (Amended '17 c. 383 § 1)

6641. Forfeiture of charter—Receiver—Suit by creditor—

132-9, 155+754.

6645. Enforcement of stockholder's liability—

Cause of action to enforce double liability of stockholder accrues at date of declaration of insolvency and appointment of receiver, and not merely from date of assessment under this and the succeeding sections (161+498). Limitation of Actions, ¶58(4).

6646. Hearing upon petition—

Proceedings under this section are summary and informal, and the stockholders are not entitled to a jury trial of the questions involving the authority of the court to order an assessment (132-9, 155+754). Jury, ~~§~~14(1).

That the proceeding was pending in one county and the final hearing upon the petition for the assessment was had in an adjoining county was not error, where an adjournment to the latter county was by the consent of both parties (132-9, 155+754). Corporations, ~~§~~263(1).

The provision of this section as to reception of evidence does not deprive the stockholders of their property without due process of law. The court may, under this section, receive such evidence, by affidavit or otherwise, as will aid in the determination of the essential questions; and hence schedules in bankruptcy and affidavits containing matters of hearsay were properly received in evidence (132-9, 155+754). Corporations, ~~§~~269(2).

The assessment is preliminary to subsequent proceedings for the collection thereof, is conclusive only as to the insolvency of the corporation and the amount of the assessment, and does not preclude the stockholders from interposing in such subsequent proceeding any other matter which may be available in defense (132-9, 155+754). Corporations, ~~§~~274.

6651. Surplus to be divided among stockholders—

Cited (135-339, 160+1014).

PART II

PROPERTY RIGHTS AND DOMESTIC RELATIONS

CHAPTER 59

ESTATES IN REAL PROPERTY

6658. Division as to time—
130-320, 153+604.

6661. Remainders defined—
Life estates and estates in remainder may be created in personalty as well as in realty (126-247, 148+112). Life Estates, ¶21.

6663. Future estates vested or contingent—
A daughter held to take a vested estate in remainder upon the death of testator (126-247, 148+112). Wills, ¶634(8).

6664. Suspension of power of alienation—
161+392; note under § 6665, post.
A 50-year option for a 30-year mining lease, given for a valuable consideration, the optionee not expressly undertaking to explore within a particular time, and no such undertaking being properly implied, did not suspend the absolute power of alienation, and is not contrary to public policy, as an unreasonable restriction upon the use and enjoyment and alienation of property (134-412, 159+966). Perpetuities, ¶6(5).

6665. Limit of suspension—
A devise of a remainder in fee to the son of testatrix, "provided that he shall not sell the said described premises for five years after his father's death," does not violate this section or § 6665, as the restriction is imposed on the son only and would terminate at his death; but the restriction is void, as repugnant to the grant of a remainder in fee (161+392). Perpetuities, ¶6(5); Wills, ¶601(4).

6687. Accumulation of rents and profits—
A trust created under § 6710 subd. 6, in so far as the trust fund is to be derived from accumulations from realty rents and profits, offends against this section and § 6688 (135-413, 161+158). Perpetuities, ¶9(4).

Where a trust cannot be carried out during the minority of grandchildren named, because they are not the real beneficiaries of accumulations from the rents and profits or royalties from realty, the trust is not one to be sustained for a limited time under this section and § 6688 (135-413, 161+158). Perpetuities, ¶9(3).

6688. Directions for accumulation, when void—
135-413, 161+158; notes under § 6687, ante.

CHAPTER 60

USES AND TRUSTS

6701. Uses and trusts abolished—Exception—
128-99, 150+233.

6703. Who deemed to have legal estate in lands—Limitations—
When beneficial interest in property under an express trust, including estate in reversion, had become vested in cestui que trust, and purpose of trust, as expressed in the instrument creating it, did not preclude right of termination, it might be terminated in a proper proceeding in court (162+450). Trusts, ¶61(1).

(635)

6705. Limitation of preceding sections—

Resulting trust between joint adventurers (121-192, 141+108, Ann. Cas. 1914C, 689). Joint Adventures, ¶4(1).

6710. Purposes of express trusts—Duration— * * *

7. Any city or village may receive, by grant, gift, devise, or bequest, and take charge of, invest, and administer, free from taxation, in accordance with the terms of the trust, real or personal property, or both, for the benefit of any public library or of any public cemetery located in, or within ten miles of, such city or village, or for the purpose of establishing or maintaining a kindergarten or other school or institution of learning therein.

Provided, however, that each city in the State of Minnesota which now has or hereafter may have 20,000 and not more than 50,000 inhabitants, in addition to the foregoing, may receive by grant, gift, devise, or bequest, and take charge of, convert, invest and administer, free from taxation, in accordance with the terms of the trust, real or personal property, or both, of any kind or nature whatsoever, and wherever located, for any public or charitable purpose, or to provide, enlarge, improve, lease and maintain for the use and benefit of the inhabitants of such city, animal, bird, fish, game and hunting preserves, public parks, public grounds, public waterways, public bath houses and grounds used in connection therewith and public play grounds within or without the limits of such city, whether within or without this state, or for the support, medical treatment and nursing of the worthy poor residing in such city. (Subd. 7, amended '15 c. 98 § 1)

1915 c. 98 § 1, amends subdivision 7 of section 6710 by adding at the end thereof the sentence above last set forth, beginning "Provided," etc.

Subds. 3-5 cited—135-413, 161+158; notes under §§ 6687, 6688, 6710, subd. 6.

Subd. 6—A trust created under subd. 6 of this section, in so far as the trust fund is derived from accumulations from realty rents and profits, offends against §§ 6687 and 6688 (135-413, 161+158). Perpetuities, ¶9(4).

[6710—]1. **Last census to govern**—For the purposes of this act the population of each city of this state shall be ascertained and determined according to the last census taken under and pursuant to the laws and authority of the State of Minnesota. ('15 c. 98 § 2)

See note under § 6710.

6719. Effect of omitting trust in conveyance—

As against an innocent purchaser for value, a deed absolute on its face cannot be shown by parol evidence to be a mortgage (123-367, 143+917). Vendor and Purchaser, ¶239(6).

6720. Same—Powers of district court—Sale, mortgage and lease—Payment to trustee—

128-99, 150+233.

6722. Termination of trust estate—

An express trust may be terminated by a decree in a proceeding brought therefor, when purpose has been fully accomplished, even before expiration of the term for which it was created (162+450). Trusts, ¶61(1).

CHAPTER 61

POWERS

6758. What power will pass by general assignment—

Nature of interest of creditor in assigned estate; garnishment thereof (see 130-392, 153+740). Assignments for Benefit of Creditors, ¶184; Garnishment, ¶31.

CHAPTER 62

LANDLORDS AND TENANTS

6807. Action by landlord—Re-entry—Tenant, when restored—In case of a lease of real property, when the landlord has a subsisting right of re-entry for the failure of the tenant to pay rent, he may bring an action to recover possession of the property, and such action is equivalent to a demand for the rent and a re-entry upon the property; but if, at any time before possession has been delivered to the plaintiff on recovery in the action, the lessee or his successor in interest as to the whole or any part of the property, pays to the plaintiff or brings into court the amount of the rent then in arrears, with interest and costs of the action, and an attorney's fee not exceeding five dollars, and performs the other covenants on the part of the lessee, he may be restored to the possession, and hold the property according to the terms of the original lease.

Provided, however, that if the lease under which the right of re-entry is claimed is a lease for a term of more than twenty years, re-entry cannot be made into said land or such action commenced by the landlord unless, after default, he shall serve upon the tenant, a written notice that the lease will be cancelled and terminated unless the payment or payments in default shall be made and the covenant or covenants in default shall be performed within thirty days after the service of such notice, or within such greater period as the lessor shall specify in said notice, and if such default or defaults shall not be removed within the period specified within said notice, then said right of re-entry shall be complete at the expiration of said period and may be exercised as provided by law; provided further that if any such lease shall provide that the landlord, after default, shall give more than thirty days notice in writing to the tenant of his intention to terminate the tenancy by reason of default in terms thereof, then the length of the notice to terminate shall be the same as provided for and required by the lease.

And provided further, as to such leases for a term of more than twenty years, if at any time before the expiration of six months after possession obtained by the plaintiff on recovery in the action, the lessee or his successor in interest as to the whole or part of the property, pays to the plaintiff, or brings into court, the amount of rent then in arrears, with interest and the costs of the action, and performs the other covenants on the part of the lessee, he may be restored to the possession and hold the property according to the terms of the original lease; provided that the provisions of this act shall not apply to any action or proceeding now pending in any of the courts of this state. (Amended '17 c. 428 § 1)

An instrument held a lease and not a contract of sale, so that in case of default in payment of stipulated rent an action in forcible entry and detainer may be maintained (123-270, 143+785). Vendor and Purchaser, §3(2).

6808. Tenant may not deny title—Exception—

Under this section the taking of a written lease by one in possession under a claim of title adverse or hostile to that of the lessor does not estop the lessee from setting up title in himself (130-368, 153+754). Landlord and Tenant, §66(1).

6810. Building destroyed, etc.—Rent—

Evidence held insufficient to show that a tenant, by remaining in the leased premises pending an adjustment of a fire loss, waived his right to terminate the tenancy under this section (132-192, 156+119). Landlord and Tenant, §101.

Where part of leasehold property is taken in condemnation proceedings for street purposes, and the front wall of the building is removed, and the landlord is not required by the lease to rebuild the same, the premises are rendered untenable, and where the tenant vacates the building on account thereof he is not liable for rent after such vacation (135-389, 160+1021). Landlord and Tenant, §192(2).

Under a lease providing that, if the buildings shall be so injured by the elements or other cause as to be untenable, the liability of the lessee for rent and all right of possession shall cease, if the tenant would avoid rent he must vacate the premises, and the lessee is liable if occupancy is continued by his sublessee (129-486, 152+869). Landlord and Tenant, §187(1).

Where a lease was terminated by destruction of the leased premises, the lessor was entitled to recover a proportionate part of the yearly rent (125-1, 145+399, Ann. Cas. 1915C, 600). Landlord and Tenant, ¶211(1).

6811. Estate at will, how determined—Notice—

A tenant, who has given notice that he will terminate a tenancy from month to month, waives notice from the landlord to quit when he holds over after the time for termination as contemplated by his notice (126-452, 148+297, L. R. A. 1915A, 235). Landlord and Tenant, ¶115(3), 116(3).

6812. Urban real estate—Holding over—

Where a tenant gives notice of an intention to terminate a tenancy from month to month, but holds over, this section does not operate to make such tenancy one for a single month, so as to obviate the giving of a new notice (126-452, 148+297, L. R. A. 1915A, 235). Landlord and Tenant, ¶116(5).

[6812—]1. Notice to landlord of vacation in certain cases—Penalty—

Every person who shall, between the 15th day of November and the 15th day of April following, remove from, abandon or vacate any building or part thereof, occupied by him, or in his possession, as tenant, except upon the termination of his tenancy, and which contains any plumbing, water, steam or other pipe liable to injury from freezing, without first giving to the landlord, owner, or agent in charge, of such building three days notice of his intention so to remove, shall be guilty of a misdemeanor. ('15 c. 213 § 1)

CHAPTER 63

CONVEYANCES OF REAL ESTATE

6813. Terms defined—Mortgages, etc., included—

The interest acquired by a vendee in a contract of sale is one that may be conveyed by deed (123-483, 144+222). Vendor and Purchaser, ¶207.

An assignment of a certificate of sale of state land is a conveyance of real estate within this section, and a good-faith purchaser who places his assignment on record is protected by the recording acts against a prior unrecorded assignment (135-408, 161+156; 135-449, 161+155). Public Lands, ¶54(10), 138.

An assignment of a certificate of sale of state land, with the assignee's name left blank, is a nullity until the name of the assignee is inserted, and hence does not operate as a conveyance (135-449, 161+155). Public Lands, ¶135(5).

6814. Conveyances by husband and wife—Powers of attorney—

A wife, joining in the deed of a homestead owned by the husband as security for a loan for future advances to him, binds her homestead right (127-419, 142+721). Homestead, ¶118(1).

Since the enactment of this section, a husband, in an action involving land not a homestead, may testify to a conversation with a deceased person, his wife being a party to the action (132-242, 156+260). Witnesses, ¶159(1). See also (132-254, 156+263).

Though separate deeds by husband and wife to their homestead are void, where the wife has removed from the homestead, executed a separate quitclaim deed to a purchaser from the husband, and obtained a divorce, the husband cannot assert, as against a subsequent bona fide purchaser, that his own separate deed is void, since he is himself estopped to deny the validity of the conveyance, and the wife has abandoned her homestead right (133-261, 158+244). Homestead, ¶122.

Delivery of separate deed of wife of land previously conveyed by husband without joinder of wife (see 128-535, 150+1103).

[6823—]1. Conveyances by husband or wife to spouse—Curative—That all conveyances of real property within this state, made prior to the first day of January, 1915, in which a married man or married woman has conveyed real property directly to his or her spouse, shall be and the same are hereby declared to be legal and valid, and the records of such conveyances heretofore actually recorded in the office of the Register of Deeds of the proper county shall be in all respects valid and legal; and such conveyances and the records thereof shall have the same force and effect in all respects as conveyances of title and for the purpose of notice, evidence or otherwise, as may be provided by law in regard to conveyances and their records in other cases. Provided, that the provisions of this act shall not apply to any action or proceeding now pending in any of the courts of this state. ('15 c. 218 § 1)

[6824—]1. Conveyances by husband under power of attorney from wife—Curative—No suit at law or proceeding in equity in any of the courts of the State of Minnesota, shall be brought to set aside any conveyance of land situated in the State of Minnesota, which said conveyance was made, executed and delivered prior to January 1, 1915, and was made by a husband for and on behalf of his wife acting under and by virtue of a power of attorney, made, executed and delivered by such wife to her husband unless such action at law or proceeding in equity is commenced on or before the first day of January, 1916, and all such conveyances in which such an action or proceeding is not commenced prior to January, 1916, are hereby legalized and declared to be legal conveyances of all of the right, title and interest of said wife and husband in and to such land to the purchaser thereof; provided, that the said power of attorney and conveyance have been duly recorded in the office of the register of deeds of the county wherein the said land is situated, for more than ten years prior hereto, and provided that the provisions of this act shall not apply to or in any manner affect the title to any land, the title to which is now in litigation. ('15 c. 314 § 1)

6825. Husband or wife of insane person—The husband or wife of any person who has been adjudged by a probate court of this state to be insane or incompetent to transact his or her business or manage his or her estate, and of whose person or estate, or both, a guardian has been appointed by such court, may, with such guardian's approval, by separate deed convey any real estate, the title to which is in such husband or wife, as fully as he or she could do if unmarried, provided that, in any such case, a duly certified copy of the letters of guardianship of such guardian shall be recorded in the office of the register of deeds of the county in which such real estate is situated and the approval of such conveyance by such guardian shall be in writing, after being first authorized so to do by an order of such probate court, and shall be endorsed on the instrument of such conveyance. Without such approval of such guardian, a conveyance by such husband or wife shall not affect the rights of the insane or incompetent spouse.

Provided further, that in any case where no guardian has been appointed of the person or estate of such insane or incompetent spouse and such insanity or incompetency has existed for three years subsequent to the adjudication of the insanity or incompetency of such insane or incompetent spouse, then and in such event, the husband or wife of such insane or incompetent person may convey any real estate, the title to which is in such husband or wife, as fully as he or she could do if unmarried.

Provided further, that this section shall not authorize the conveyance of a homestead unless the guardian of the person or estate of such insane or incompetent person has been appointed by the probate court of the proper county and such guardian shall consent in writing to such conveyance, by endorsement thereon, after being first authorized so to do, by order of such probate court. (Amended '15 c. 131 § 1)

6827. Quitclaim—Words of inheritance unnecessary to pass fee—

A quitclaim deed conveys the equitable title of the holder of a certificate of sale of state land (135-408, 161+156). Public Lands, ¶135(5).

6829. No covenants implied—Adverse holding—

The existence of a rural highway across land conveyed by warranty deed in the usual form does not constitute a breach against incumbrances (122-368, 142+878, 48 L. R. A. [N. S.] 619, Ann. Cas. 1914D, 1007). Covenants, ¶100(2).

6832. Liability of grantor who covenants against incumbrances—

A reassessment on account of undervaluation held not an incumbrance constituting a breach of warranty (129-87, 151+537).

6844. Recording act—Unrecorded conveyances void, when—

What is a conveyance—An assignment of a certificate of sale of state land is a conveyance within § 6813, and a purchaser in good faith of such certificate, who places his assignment on record, is protected by this section against a prior unrecorded assignment (135-408, 161+156). Public Lands, ¶54(10), 138.

Registration—Parties—A purchaser in good faith and without notice from a registered owner takes the title free from the claim of a person fraudulently omitted as a party in the

registration proceedings, where such omission does not appear on the face of the judgment roll (123-182, 143+324, L. R. A. 1916D, 4). Records, ~~§~~9(13).

Rights of subsequent purchasers—That a contract of purchase is of record is not conclusive of the rights of a subsequent purchaser from the vendor, where the purchaser named in the recorded contract by his acts evinces that he has abandoned the same (161+587). Vendor and Purchaser, ~~§~~231(1).

Under this section a subsequent deed first recorded does not take precedence of a prior unrecorded deed, unless the grantee is a purchaser for a valuable consideration, and in this case the court did not err in refusing to find that plaintiff purchased for value (133-153, 157+1072). Vendor and Purchaser, ~~§~~236.

Evidence in a suit to set aside a deed of lots to defendant as void held to support finding that deed was duly executed, delivered, and recorded without fraud prior to deed of same property executed by same grantor to plaintiffs (162+527). Deeds, ~~§~~211(3).

Mortgage notice of what—The record in one county of a mortgage containing an after-acquired property provision is not constructive notice to a subsequent incumbrancer of property afterwards acquired by the mortgagor in another county (132-277, 156+255). Mortgages, ~~§~~171(5).

A mortgage given to the record owner by one who is a stranger to the title is not notice of an unrecorded deed from the record owner to the mortgagor (131-99, 154+743). Vendor and Purchaser, ~~§~~231(5).

[6848—]1. **Recorded conveyances—Curative**—That in all cases where deeds, mortgages or other instruments affecting real estate within this state, or letters of attorney authorizing the same, have heretofore been actually recorded in the office of the register of deeds of the county where the real estate thereby affected was, at the time of making of such records, or is, situate, whether such deeds or other instruments were duly or properly admitted to record or otherwise, all such instruments and the record thereof are hereby legalized and confirmed; and all such records may nevertheless be read in evidence in any court within this state, and shall be received as prima facie evidence of the contents of the original instruments of which they purport to be records;

And all such records shall in all respects have the same force and effect as they would have if such original instruments at the time that they were so recorded had been legally entitled to record and were legally recorded. ('17 c. 200 § 1)

[6848—]2. **Same—Copies as evidence—Pending actions**—That duly authenticated copies of such record may be read in evidence in any court within this state, with the same effect as the records themselves aforesaid.

Provided, that nothing in this act shall be held to apply to any action heretofore commenced or now pending in any of the courts of this state nor to any deed, mortgage or other instrument or the record thereof, on which any mortgage registry tax provided by law has not been paid. ('17 c. 200 § 2)

6849. Instruments relating to timber, minerals, etc.—

A written contract held to constitute a sale of timber, which was not reduced to a mere license to cut the timber by a restriction against alienation of less than the whole of the contract or the land, or without the vendor's approval (126-176, 148+43). Logs and Logging, ~~§~~3(7).

[6850—]1. **Record of notice of condemnation in certain cases**—Whenever any city, village, board of park commissioners or board of public works in this state shall hereafter take or acquire, by condemnation proceedings, any land or lands or any easement or interest therein for laying out, opening, widening, extending or establishing any public street, highway or alley, or for public parks, parkways or other public purposes, or shall vacate or abandon any public street, highway, alley, park or public grounds or any portion thereof, or any easement or interest therein, a notice in writing of the completion of every such condemnation proceeding and of every such vacation or abandonment of any public street, highway, alley, park or public grounds or any portion thereof, shall be forthwith filed for record with the register of deeds of the county within which the lands and premises vacated thereby are located. Such notice shall be prepared and filed by the clerk, recorder or other person charged with the duty of keeping the records of such city, village, board or park commissioners or board of public works so acquiring any such lands or vacating or abandoning any such street, highway, park or public grounds, and such notice shall contain a statement of the time of the completion of such condemna-

tion proceedings or of such vacation or abandonment, as the case may be, and the name of the city, village or board by whom such proceedings are prosecuted or such vacation is made, and a description of the real estate and lands affected thereby. Any failure to file such notice shall not invalidate or make void any such condemnation proceeding for such vacation or abandonment of any public street, highway, park or public grounds or any portion thereof. ('17 c. 416 § 1)

Section 2 repeals 1915 c. 322.

6851. When deed not defeated by defeasance—

A purchaser of land from the grantee in an absolute deed, without notice that the deed was given as security for a debt, is protected, as against the grantor and the holder of a subsequent judgment against such grantor, where the latter is in possession of the land and informs the purchaser that he holds as tenant only (123-293, 143+720). Judgment, ~~6~~787.

CHAPTER 64

PLATS

6856. Survey and plat—Monument—Rivers, lakes, etc.—

A plat held effective as the dedication of a street (126-456, 148+501). Dedication, ~~6~~19(1). The boundary line of a street held to be in accordance with the finding of the trial court (126-456, 148+501). Boundaries, ~~6~~37(3).

6857. Dedication—Certification—Approval—Verification—

No proof of acceptance of a statutory dedication is necessary (126-456, 148+501). Dedication, ~~6~~31.

Under village plat dedicating street, and providing that fee should not be included in any lot, fee remained in plat, and did not pass to subsequent purchasers of abutting property, but passed by plat's conveyance (162+453). Dedication, ~~6~~53.

The plat of Tuttle's addition to St. Anthony held to sufficiently describe the land platted. Failure of the owner to sign a plat, and the failure of the notary to attach his seal to the acknowledgment, held cured by Laws Ex. Sess. 1881 c. 57 § 1, validating plats (123-344, 144+150). Municipal Corporations, ~~6~~43.

6863. Vacation of plats—Upon the application of the owner or owners of land included in any plat, and upon proof that all taxes assessed against such land have been paid, and a notice hereinafter provided for given, the district court may vacate or alter all or any part of such plat, and adjudge the title to all streets, alleys and public grounds to be in the persons entitled thereto; but streets or alleys connecting separate plats or lying between blocks or lots, shall not be vacated between such lots, blocks or plats as are not also vacated, unless it appears that the street or alley or part thereof sought to be vacated is useless for the purpose for which it was laid out. The petitioner or petitioners shall cause two weeks' published and posted notice of such application to be given, the last publication to be at least ten days before the term at which it shall be heard; and said petitioner or petitioners shall also serve personally, or cause to be served personally, notice of such application, at least ten days before the term at which said application shall be heard, upon the mayor of the city, the president of the village, or the chairman of the town board of the town where such land is situated. The court shall hear all persons owning or occupying land that would be affected by the proposed vacation, and if, in the judgment of the court, the same would be damaged, the court may determine the amount of such damage and direct its payment by the applicant before the vacation or alteration shall take effect. A certified copy of the order of the court shall be filed with the county auditor, and recorded by the register of deeds; provided, however, that the district court shall not vacate or alter any street, alley or public ground dedicated to the public use in or by any such plat in any city, town or village organized under a charter or special law which provides a method of procedure for the vacation of streets and public grounds by the municipal authorities of such city, town or village. (Amended '17 c. 38 § 1)

A judgment vacating a portion of a plat, not including the plaintiff's property, did not bar a recovery of consequential damages by him. Evidence held to show consequential damages to

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one not in the vacated part of a plat, resulting from closing of streets, and the amount thereof (135-175, 160+771). Municipal Corporations, §671(3, 4).

This section, as amended, deprives the district court of the authority to vacate or alter the public streets or alleys of the city of St. Paul, since the charter of said city provides a method for vacation of streets dedicated to the public by the city authorities under the first proviso of said section as amended (129-305, 152+643). Municipal Corporations, §657(5).

The title of the act from which this section is derived does not so limit or restrict the act as to exclude the subject of vacation of plats or streets (129-305, 152+643). Statutes, §123(4).

This act is not invalid, in that it makes an arbitrary classification of municipalities, in that it excepts cities of the first class having a special charter from its operation, for, irrespective of the proviso, such cities would not have their special charters repealed or affected by implication (129-305, 152+643). Statutes, §93(4).

CHAPTER 65

REGISTRATION OF TITLE

6868.

Application of rule as to abatement of action on the ground of another action pending (see 127-416, 149+735). Abatement and Revival, §7.

6871. Applicant's interest—No land, the title to which is derived from any tax or local assessment sale, shall be registered until such title has been adjudged to be valid by a court of competent jurisdiction, and a certified copy of the decree duly recorded with the register of deeds: Provided, however, that any person may make the application when for at least fifteen years the land has been in the adverse possession of the applicant or those through whom he claims title. No lesser estate than a fee simple, and no mortgage, lien or other charge upon land, shall be registered, unless the estate in fee simple therein is registered; but the fact that the estate or interest of the applicant is subject to any outstanding lesser estate or to a mortgage, or other charge or lien, shall not prevent its registration, and whenever a dock or harbor line has been established by Federal authority, the interest and estate of a riparian proprietor in the submerged lands lying between the original shore line and such established dock line may be registered under this act, subject, however, to the rights of the State of Minnesota in its sovereign capacity in the same and such registration shall not in any manner affect or change the rights of the state with respect to such lands. (Amended '15 c. 242 § 1)

Land, title to which is in the United States, cannot be registered (130-456, 153+871). Courts, §489(5); Records, §9(1, 4, 13).

6880. Reference to examiner—Reports—

The state cannot be made a party unless, in the opinion of the examiner, it has an interest in or lien upon the land (123-397, 143+981, L. R. A. 1916D, 1). Records, §9(6).

In spite of § 8450, the examiner is not justified in relying on a receipt or certificate to an entryman by a local land office as establishing that the United States has parted with its title. Omission of duty by examiner as affecting right to compensation out of assurance fund (see 130-456, 153+871). Records, §9(10). See, also, note under § 6943, ante.

6888. Dismissal—

Pendency of registration proceedings as ground for abatement of action to determine adverse claims (see 127-416, 149+735). Abatement and Revival, §7.

6889. Decree of registration—Effect—

Where judgment is procured by fraud on the part of an applicant for registration in failing to name as parties or to serve claimants known to him, it is not binding on such omitted claimants, and where such defect appears on the face of the judgment roll, it is open to collateral attack; but if such defect does not appear the judgment cannot be attacked collaterally (123-182, 143+324, L. R. A. 1916D, 4). Records, §9(13).

Where the existence of a claimant omitted from the registration proceedings by the fraud of the applicant does not appear from a judgment roll, one who purchases from the registered owner for a valuable consideration without notice takes the title free from all incumbrances and adverse claims (123-182, 143+324, L. R. A. 1916D, 4). Records, §9(13).

Where the holder of tax certificates and the county were parties, a judgment adjudging the tax sales and certificates void held conclusive as against the county, and not open to collateral attack (123-397, 143+981, L. R. A. 1916D, 1). Records, §9(13).

6892. Certificate of title—What survives—

The purpose of this section is to create an indefeasible title in the person adjudged to be the owner (123-182, 143+324, L. R. A. 1916D, 4). Records, ☞9(3).

6943. Damages through erroneous registration—Action—

Since land, title to which is in the United States, cannot be registered, the omission of the examiner to ascertain and report such fact is an "omission" which entitles a good-faith purchaser, relying on the certificate of title, to reimbursement out of the assurance fund, though the certificate does not purport to bar the rights of the United States. Purchasing registered land on the faith of the certificate of title, and without making an independent investigation of the title, is not negligence on the part of the purchaser (130-456, 153+871). Records, ☞9(10).

6944. Parties defendant—Judgment—Execution—

130-456, 153+871; note under § 6943.

CHAPTER 66

HOMESTEAD EXEMPTION

6957. Dwelling place exempt—Exceptions—

206 Fed. 877, 124 C. C. A. 537.

Where a vendor conveys to a third person, who is actually residing on the land, and such third person conveys to the vendee, an existing judgment against such third person does not become a lien as against the vendee, as whatever interest vested in such third person forthwith became his homestead (123-293, 143+720). Homestead, ☞103.

The owner of a lot 50 feet wide, living in a store building located on one side, and renting a small dwelling on the other side to third parties, is entitled to retain the entire lot as his homestead (134-478, 159+788). Homestead, ☞63.

Declarations of homestead claimant, since deceased, as evidence of homestead character of occupancy (128-525, 151+416). Evidence, ☞236(1).

6958. Area, how limited—

206 Fed. 877, 124 C. C. A. 537.

The homestead may consist of a tract made up of lots owned separately by husband and wife, where the aggregate of the two parcels does not exceed the statutory limit as to quantity (161+515; note under § 6960, post). Homestead, ☞70.

6960. Title may be in husband or wife—Equitable title exempt—

The interest acquired by the vendee in a contract of sale, where such vendee takes possession and makes improvements, is one subject to homestead estate (123-483, 144+222). Homestead, ☞128.

Where land owned by a wife adjoins that owned by the husband, and the same is in a single inclosure and occupied as a homestead, the house being located over the boundary line, and the entire tract does not exceed the homestead limit as to quantity, the land as a whole may be claimed as a homestead exempt from execution (161+515). Homestead, ☞87.

6961. No alienation without consent of spouse—Exceptions—

In general—It was error to receive as evidence of marriage a judgment in a former action to which defendant was not a party (128-525, 151+416). Judgment, ☞707.

Where a father conveyed land to his son, and the latter took possession with his wife, and lived on the land as a homestead, a judgment in an action against the son alone, decreeing a half interest in the land to plaintiff based on a former contract with the father, was a nullity, and passed no title to plaintiff (133-218, 158+250). Husband and Wife, ☞238(3).

Separate deeds—Estoppel—Though separate conveyances by husband and wife to the homestead are void, they may be estopped to deny the validity thereof. Where a wife separates from her husband, executes a separate deed to a purchaser from the husband of the homestead, and thereafter procures a divorce, the husband, who has surrendered possession to the purchaser, cannot assert, as against a subsequent bona fide purchaser, that his own separate deed is void, especially where he does not offer to return the purchase money received, or to reimburse his grantees for improvements (133-281, 158+244). Homestead, ☞122.

Deed as mortgage—An absolute deed of homestead owned by the husband, in which deed the wife joins, binds her homestead right for future advances made to the husband to secure which the deed is made (122-419, 142+721). Homestead, ☞118(1).

Deed reserving life estate—A warranty deed reserving a life estate in the grantor was void as to the homestead included in such conveyance, where the same was not signed by the grantor's wife (124-335, 144+1094). Homestead, ☞118(5).

Giving right of way for a road—An agreement by a husband, in which his wife does not join and to which she does not assent, to give a town a right of way for a road across a tract which constitutes the homestead, is void. Evidence held insufficient to show assent by a

wife to the grant by the husband of a right of way over the homestead (133-128, 157+1089). Homestead, ~~§~~118(5).

A deed granting a perpetual right of way over a homestead is an "alienation," and is invalid, unless signed by both husband and wife (129-288, 152+648, Ann. Cas. 1916E, 1130). Homestead, ~~§~~118(3).

Reformation of deed conveying homestead—A conveyance of the homestead, or a portion thereof, executed by both husband and wife, as required by this section, may be reformed by correcting a misdescription of the property intended to be conveyed thereby (129-288, 152+648, Ann. Cas. 1916E, 1130). Reformation of Instruments, ~~§~~13(3).

Evidence examined, and held sufficient to sustain a finding that both husband and wife agreed to grant a right of way through the homestead, and that it was omitted from the deed by mutual mistake, so that reformation would be decreed (129-288, 152+648, Ann. Cas. 1916E, 1130). Reformation of Instruments, ~~§~~45(4).

6963. Sale or removal permitted—Notice—

206 Fed. 877, 124 C. C. A. 537.

CHAPTER 67

CHATTEL MORTGAGES AND CONDITIONAL SALES

CHATTEL MORTGAGES

6966. Mortgages, when void—

A chattel mortgage by a son to his father of 2,500 bushels of a growing crop of corn estimated to produce 3,000 bushels, accompanied by an understanding that the son might continue for a time to feed a small amount of stock, was not void as matter of law; it not appearing that the feeding of the stock would impair the security (130-141, 153+125). Chattel Mortgages, ~~§~~188(1).

A chattel mortgage held not fraudulent as to creditors, though it was agreed between the parties that a part of the property included in the mortgage might be used to feed animals, also included in the mortgage, and that the mortgagor might use sufficient of the property for his living, since the property so needed is exempt (133-375, 158+612). Chattel Mortgages, ~~§~~191.

6967. Where filed—

Applicable only in cities of first class and counties where the salary of the register of deeds is fixed by special law—See §§ [6993—]1 to [6993—]7.

Cited (130-256, 153+324; 130-256, 153+598).

[6967—]1. Defective chattel mortgages—Curative—That in all cases where chattel mortgages have heretofore been executed between the first day of January, 1911, and the first day of January, 1914, which were attested by only one subscribing witness, and have been actually filed with the register of deeds of the proper county, and in all cases where such chattel mortgages have heretofore been actually filed in the office of the clerk or recorder of the proper town or municipality, all such chattel mortgages and the filing thereof are hereby legalized and confirmed. All of such instruments so filed shall in all respects have the same force and effect as they would have if such original instrument at the time they were so filed had been duly attested by two subscribing witnesses, and duly certified copies thereof may be read in evidence in any court in this state with the same effect as the original.

Provided, that nothing in this act shall be held to apply to any action heretofore commenced or now pending in any court in this state; nor in any manner apply to any one in good faith acquiring any interest in any property included in any such mortgage subsequent to the delivery of such mortgage, and prior to the taking effect of this act. ('15 c. 308 § 1)

6973. Foreclosure, when and where made—

A junior mortgagee may bring an action in equity to foreclose, where the first mortgagee is in possession, but he must redeem or show that there will be a surplus after satisfying the first mortgage (122-283, 142+195). Chattel Mortgages, ~~§~~271.

CONDITIONAL SALES

What constitutes conditional sale (see 129-198, 151+971). Sales, ~~6~~450, 457.

**FILING CHATTEL MORTGAGES, BILLS OF SALE OF CHATTELS,
AND CONDITIONAL SALE CONTRACTS EXCEPT IN
CITIES OF FIRST CLASS**

6985-6988. [Superseded.]

See §§ [6993—]1 to [6993—]7.

6985—Cited (162+468).

What constitutes conditional sale (see 129-198, 151+971). Sales, ~~6~~450, 457.

6990-6993. [Superseded.]

See §§ [6993—]1 to [6993—]7.

[6993—]1. **Instruments to be filed with register of deeds**—Any bill of sale, instrument evidencing a lien on or reserving title to personal property and satisfactions of liens on personal property, shall be filed with the Register of Deeds in the county in which the said personal property is situate. ('15 c. 364 § 1, amended '17 c. 158 § 1)

1915 c. 364 § 8 repeals inconsistent acts, etc. 1917 c. 158 § 2 repeals inconsistent acts, etc.

[6993—]2. **Same—Duty of register—Fees, etc.**—Every register of deeds on and after July 1st, 1915, shall receive and file any such instrument, which shall be executed, witnessed, and acknowledged according to law, or a true copy thereof and shall immediately number and index the same, and certify on each instrument the exact time of receipt, which certificate shall be prima facie evidence of the facts stated therein. No such instrument shall be removed from the office where filed until cancelled, released, or satisfied. The fees for filing such instruments shall be twenty-five cents for each instrument and twenty-five cents for a certified copy thereof, when copy is furnished, said amount to be paid to the register of deeds at the time of filing, and such fee shall be retained by the register of deeds, as additional salary and compensation for filing such instruments. ('15 c. 364 § 2)

[6993—]3. **Same—Index book**—Every register of deeds shall keep in his office an index book in which he shall enter the number given to every such instrument, the names in alphabetical order of the lien debtor and lien creditor and vendee and vendor, and the exact time of filing the instrument. He shall also enter the sum for which a lien is claimed and the satisfaction of the same when made. ('15 c. 364 § 3)

[6993—]4. **Same—Clerk or recorder to deliver documents to register**—Each municipal clerk or recorder shall, on the first day of July, 1915, deliver all instruments evidencing liens on or reserving title to personal property, then on file with him, and all records of the same in his custody, to the register of deeds of his county, and said register of deeds shall thereafter be the custodian of the same, and of the records thereof, and no new filing, indexing, or record thereof need be made by said register of deeds. ('15 c. 364 § 4)

[6993—]5. **Same—Register to receive, etc.—Notice—Expenses**—Each municipal clerk or recorder shall be paid out of the treasury of his county, the sum of ten cents per mile in traveling from his place of business to and returning from the county seat of his county, for delivering said instruments and records to the register of deeds of his county. The register of deeds of each county shall receive the said instruments and records as delivered to him by the several municipal clerks and recorders of his county and safely keep and preserve the same in his office, and endorse on each instrument and record book the date of the receipt of the same by him, and thereafter said instruments and records shall be notice to all persons of the existence and terms thereof. ('15 c. 364 § 5)

[6993—]6. **Same—Fees for receiving documents transferred**—For receiving, keeping and preserving, and endorsing all of said instruments and records transferred to him as aforesaid, there shall be paid to the register of deeds

out of the treasury of his county, a fee according to the population of his county as shown by the 1910 national census of the United States of America, which fee shall be as follows:

In counties having a population of 50,000 or less, \$10.00.

In counties having a population exceeding 50,000 and not more than 100,000, a fee of \$25.00.

In counties having a population exceeding 100,000 and not more than 150,000, a fee of \$50.00.

In counties having a population exceeding 150,000 and not more than 200,000, a fee of \$100.00.

In counties having a population exceeding 200,000 and not more than 300,000, a fee of \$125.00.

In counties having a population exceeding 300,000 a fee of \$200.00. ('15 c. 364 § 6)

[6993—]7. **Same—Not applicable to certain cities and counties**—This act shall not apply to cities of the first class, nor to counties wherein the salary of the register of deeds is fixed by special law. ('15 c. 364 § 7)

SEED GRAIN CONTRACTS

6995. Filing—Duration of lien—To preserve said lien, the person furnishing seed as aforesaid, within thirty days after the execution of such note or contract, shall file the same, or a copy thereof, with the register of deeds of the county in which the land upon which the crop is to be grown is situated. Thereupon the lien shall continue for the term of one year from the date of filing, upon the crop growing or grown from such seed, to the amount and according to the terms of the agreement, against the owner and all creditors and purchasers. It shall not be affected by any exemption law, and shall take precedence of all other liens and be notice of its existence to all persons. (Amended '15 c. 191 § 1)

CHAPTER 68

FRAUDS

STATUTE OF FRAUDS

6998. No action on agreement, when—

In general—No distinction should be made in the interpretation of this section and § 6999, because one reads "no action shall be maintained," and the other "every contract * * * shall be void," unless evidenced by writing, etc. (162+1082). Frauds, Statute of, § 121.

The statute is not a mere rule of evidence, but precludes the substantive right of action upon the oral contract (128-468, 151+195). Frauds, Statute of, § 125(1).

Subd. 1—128-468, 151+195; note under § 7003.

An oral contract of partnership, actually performed within a year, is not within the statute (129-252, 152+538). Frauds, Statute of, § 139(1).

A contract attached to a certificate of stock, reciting the purchase of the stock and the payment of the price, and stipulating that the vendors agree to pay a percentage of the price annually for five years, sufficiently expresses the consideration on the face of the agreement, and is not invalid under the first subdivision of this section (135-235, 160+765). Frauds, Statute of, § 108(1).

Subd. 2—Where defendant in a personal injury case effected a settlement by agreeing to pay plaintiff a specified amount, and another amount to the physician who treated plaintiff, the promise to pay the physician was an original undertaking, and not within this section (126-251, 148+104). Frauds, Statute of, § 33(1).

An agreement by a purchaser to pay a debt of the seller as part of the price is not invalid under the statute because no consideration is expressed therein (128-490, 151+203). Frauds, Statute of, § 18(3).

A contract attached to and delivered with a certificate of stock, reciting the purchase of the stock and the payment of the price, and stipulating that the vendors agree to pay a percentage of the price annually for five years, sufficiently expresses the consideration on the face

of the agreement, and is not invalid as violative of subdivision 2 of this section (135-235, 160+765). Frauds, Statute of, ¶108(1).

6999, 7000. [Superseded.]

See note under § [6015-]14.

6999—An order for the manufacture of goods for delivery in the future is not within the statute, and void because not in writing (130-304, 153+613). Frauds, Statute of, ¶83.

A subsequent delivery and acceptance of part of the goods under a parol contract of sale satisfies the statute of frauds (130-151, 153+316). Frauds, Statute of, ¶90(4).

7002. Conveyance, etc., of land—

Cited (128-468, 151+195).

A deed in writing and under seal, made by one partner in behalf of the firm, may be ratified by the other partner by parol (129-481, 152+879). Partnership, ¶157(3).

An easement may be extinguished or modified by parol agreement fully executed (127-313, 149+652). Easements, ¶29.

7003. Leases—Contracts for sale of lands—

135-25, 159+1091.

Cited (162+1082).

In general—A parol agreement to execute a lease to real property to extend for a longer period than one year is unenforceable (128-468, 151+195). Frauds, Statute of, ¶128.

An oral agreement for the purchase of land is void, and where the purchaser does not take possession or make improvements, he obtains no rights in the land, though he pays the purchase price (135-449, 161+155). Frauds, Statute of, ¶129(5).

Contracts creating partnership or joint adventures—A contract relating to land held to create a partnership or joint adventure, and not to involve a sale of an interest in land within the statute (127-15, 148+476). Frauds, Statute of, ¶76.

An agreement to procure an option on a mine, and to transfer the mine to a corporation to be formed by the parties to the agreement, the stock of which was to be distributed between them, was a partnership agreement or a joint adventure, and was not within the statute of frauds (130-450, 153+874). Frauds, Statute of, ¶56(8, 9), 129; Joint Adventures, ¶1; Partnership, ¶20.

Verbal extension of lease—A verbal agreement to extend the term of a lease for one year, to commence at a future date, is within the statute (134-68, 158+808). Frauds, Statute of, ¶53.

Part performance of lease—Part performance includes taking possession under the alleged lease, and payment in reliance on such contract. Evidence held not to show clearly the lease and part performance thereof (122-123, 142+18). Specific Performance, ¶110.

Estoppel—Estoppel to urge statute in avoidance of parol agreement to execute lease (128-468, 151+195). Frauds, Statute of, ¶144.

Agreement to deal on the basis of a rejected offer—An agreement to deal on the basis of a rejected offer to sell land must be in writing (123-409, 143+1127, L. R. A. 1915D, 150). Frauds, Statute of, ¶103(1), 118(1).

Memorandum—Under this section only the vendor need sign the contract, and he may enforce it against the vendee, if the latter accepts it (125-81, 145+791). Frauds, Statute of, ¶115(4).

The contract must describe the lands sold with reasonable certainty, but such description may be by reference to another writing (125-81, 145+791). Frauds, Statute of, ¶118(2, 5).

To establish a contract for the sale of real property by correspondence, there must be a definite offer in writing and an unqualified acceptance in writing (162+1072). Vendor and Purchaser, ¶28.

Authority of agent—An undisclosed principal may enforce specific performance of a contract to sell real estate made by an agent in his own name, though the agent was not authorized in writing to make the sale, and though the principal is unknown to the vendee; and if the contract calls for a warranty deed, he is entitled to the warranty of the party who executed the contract, and if this is offered him the real principal may demand that he pay the purchase price (135-127, 160+251). Specific Performance, ¶17.

7004. Specific performance—

128-150, 150+622.

In general—Evidence held insufficient to establish the existence of an alleged oral contract to convey land (125-49, 145+615). Specific Performance, ¶121(3, 4).

Contract held subject to specific performance (125-81, 145+791). Specific Performance, ¶32(3).

An answer in ejectment, alleging that defendant entered into an agreement with plaintiff's grantor, whereby the latter agreed to give and convey land to defendant, if the latter would support such grantor for the remainder of his life, and that in pursuance of such agreement defendant moved onto the land, made improvements thereon, paid the taxes, and offered to support grantor who removed from the land, and asking for specific performance or such other relief as might be just, did not state a cause of action for specific performance of an oral contract partly performed, or for alternative relief by adjudication of a lien (134-321, 159+752). Frauds, Statute of, ¶142, 149; Specific Performance, ¶28(2).

If a contract to bequeath is definite, and plaintiff has performed, and a peculiar and domes-

tie relation has been assumed under which services, incapable of pecuniary valuation, has been rendered, specific performance will be decreed (124-114, 144+744). Specific Performance, ¶86.

The doctrine of specific performance rests upon the theory that one party has estopped himself from invoking the statute by permitting the other party to change his situation in reliance upon the contract to such an extent that the enforcement of the statute would operate as a fraud upon him, and where such change of position does not appear the statute operates (132-86, 155+1054). Specific Performance, ¶39, 41.

Verbal gifts of land—Evidence held to establish a parol gift of land, and acceptance by the donee, accompanied with the taking of possession and the construction of valuable improvements in reliance on the gift, so that the transfer was taken out of the statute of frauds (135-368, 160+1031). Frauds, Statute of, ¶158(4).

A verbal gift of land, to be valid, must be executed by delivery of possession, acceptance of the gift, and performance of such acts in reliance thereon as would work a substantial injustice to hold the gift void, such as the bestowal of personal services impossible of estimation in money, or against collection of which the statute of limitations has run, or the making of permanent improvements on the land (130-368, 153+754). Frauds, Statute of, ¶129(11).

In ejectment, the defense of a parol gift of the land, which was accepted and executed, is proper, though such a defense is usually litigated in an action for specific performance. Adverse possession of land for the statutory time is not necessary to prove an executed parol gift, it being sufficient that the gift is accepted and that valuable improvements are made in reliance upon it, and whether the gift is executed is a question of fact for the jury (128-389, 148+125). Frauds, Statute of, ¶129(1), 159; Gifts, ¶25.

Part performance—Evidence of performance (see 132-106, 155+1071). Frauds, Statute of, ¶158(4).

The doctrine of part performance rests on the ground that to deny the force and effect of the contract would work a virtual fraud (130-368, 153+754). Frauds, Statute of, ¶129(1).

The oral contract, sought to be enforced on the ground of partial performance, must be clearly proved, and its terms must be so clear and distinct as to leave no reasonable doubt of its meaning (127-238, 149+287). Frauds, Statute of, ¶158(4).

An agreement to obtain an option on a mine, and to transfer same to a corporation, the stock in which was to be distributed among the parties to the agreement, which agreement was carried out, was taken out of the statute by performance (130-450, 153+874). Frauds, Statute of, ¶56(8).

Evidence of part performance by a lessee, consisting of plowing the land and spreading manure thereon in reliance on a verbal agreement of the lessor to extend the lease, held to justify a finding of part performance taking the agreement to extend out of the statute (134-68, 158+808). Frauds, Statute of, ¶158(4).

Evidence held insufficient to show clearly alleged oral lease or part performance (122-123, 142+18). Specific Performance, ¶119.

Evidence held to sustain the findings of the trial court that a written option to purchase had been modified by parol, and that the parol agreement had been acted upon, so that specific performance would be decreed (128-106, 150+387). Specific Performance, ¶121(3, 5).

Where a purchaser of land takes possession and makes valuable improvements, he is entitled to a conveyance, though the agreement of sale was in parol (128-135, 150+615). Frauds, Statute of, ¶129(9).

An oral contract to convey land is taken out of the statute of frauds, where the purchaser goes into possession of the land and makes improvements (125-49, 145+615). Frauds, Statute of, ¶79.

In absence of possession and improvements, an oral contract to purchase land gives the purchaser no rights, though he has paid the purchase price (135-449, 161+155). Frauds, Statute of, ¶129(5).

Contract to devise—To warrant specific performance of an oral contract to give property by will, the contract must be reasonable and satisfactorily established, and must have been performed to such extent and in such manner that the beneficiary cannot be properly compensated in damages (125-118, 145+812). Specific Performance, ¶51, 94, 121(2).

7005. Logs—Extension of time of payment for labor—

Where the pleadings do not show that the contract sued on is within the statute, the defense may be presented by motion to dismiss at the close of plaintiff's case (128-468, 151+195). Frauds, Statute of, ¶152(1).

CONVEYANCES FRAUDULENT AS TO CREDITORS

7011. Of chattels without delivery—Fraud presumed—

See note under § [6015]—]25 as to changes effected thereby and by § [6015]—]26.

7013. With intent to defraud creditors, void—

Conveyance by nonresident—Attachment—If the conveyance of real estate made by a nonresident debtor is fraudulent as to creditors, the land remains the property of the debtor, as against such creditors, and may be seized by them on a writ of attachment as the basis of an action against such nonresident. Where such attachment has been made the creditor has the right to proceed to judgment and to sell the real estate without first contesting the validity of the conveyance. The service of a summons upon a nonresident debtor in an action to recover

the debt cannot be set aside upon affidavits that he has no interest in the property upon which attachment has been levied as the basis of the action, since the validity of the conveyance cannot be determined upon affidavits, nor in an action to which the claimant thereunder is not a party (123-364, 143+915). *Fraudulent Conveyances*, ¶228.

Homestead—Where husband, to induce his wife to join in sale of homestead, agrees that she shall receive the proceeds, the transaction is not fraudulent as to creditors (123-459, 144+152). *Fraudulent Conveyances*, ¶52(4).

A deed conveying both a homestead and unexempt land is valid as to the homestead, even if fraudulent as to the unexempt land (134-400, 159+958). *Frauds, Statute of*, ¶52(3).

Declaratory of common law—The transfer with intent to delay or defraud creditors contemplated by § 7846 subd. 4 is a transfer fraudulent as to creditors as at common law (124-112, 144+433). *Attachment*, ¶44.

Transfers between relatives—Conveyance of land to a child in payment for services rendered in pursuance of a prior agreement is supported by a sufficient consideration as against creditors of the grantor (134-400, 159+958). *Fraudulent Conveyances*, ¶96(2).

A deed by defendant to his daughter held in fraud of judgment creditors (126-141, 147+958). *Fraudulent Conveyances*, ¶295(1).

Evidence admissible—In an action against a sheriff to recover personal property seized under execution against plaintiff's husband, evidence as to transactions by which her husband's farm had been transferred to plaintiff was properly admitted upon the question whether there was a scheme to defraud and as to whether the produce belonged to plaintiff or her husband (135-105, 160+249). *Fraudulent Conveyances*, ¶286(8).

Preferences—Default judgment based upon a valid indebtedness procured by judgment creditor with co-operation of defendant to give creditor a paramount lien on lands and to defeat defendant's creditors was a preference, and when without special benefit to debtor was voidable only in bankruptcy or insolvency proceedings. Default judgment based upon a valid indebtedness amounting to a preference as against defendants' creditors is not void at common law, though obtained through collusion, unless debtor, co-operating with preferred creditor, secured some special advantage to himself (162+474). *Fraudulent Conveyances*, ¶124.

A mortgage giving an existing creditor a preference is not invalid as to other creditors, unless the mortgagee is chargeable with notice of intent by the mortgagor to defraud creditors (129-481, 152+879). *Fraudulent Conveyances*, ¶115(1).

Intent—In absence of an actual intent to defraud creditors, a transfer by a debtor to a creditor of property to pay or secure the debt is not fraudulent, though it may be a preference, unless it is made invalid by law, and then only in aid of some insolvency or bankruptcy proceeding (127-256, 149+372). *Fraudulent Conveyances*, ¶4(1).

Evidence held to sustain a finding that there was no intent to defraud creditors, invalidating an assignment by a debtor to his creditor of the proceeds of an insurance policy on property that had been destroyed by fire (127-256, 149+372). *Fraudulent Conveyances*, ¶298(1).

Evidence held to sustain a finding that a voluntary conveyance of land was actually fraudulent, and that it was made with intent to defraud subsequent creditors (129-356, 152+727). *Fraudulent Conveyances*, ¶298(4).

A mortgage, executed without consideration, to protect the mortgagors against their own improvidence, did not work an estoppel against a proceeding to cancel the same, on the ground that it was given with intent to defraud creditors, where there were in fact no creditors entitled to complain (124-176, 144+761). *Fraudulent Conveyances*, ¶174(4).

Judgments—In action to have lien of judgment declared inferior to lien of plaintiff's subsequent judgment, evidence held to sustain finding that former judgment was procured to defraud creditors, especially plaintiff, and was not founded on a bona fide indebtedness of same defendant (162+474). *Fraudulent Conveyances*, ¶299(7).

Consideration—A voluntary conveyance of real estate is void as to subsequent creditors of the grantor, if it was actually fraudulent, and was made with intent to defraud such creditors (129-356, 152+727). *Fraudulent Conveyances*, ¶74(4).

Conveyance of unexempt property without consideration, without retention of sufficient property to pay the grantor's debts, is void as to prior creditors (134-400, 159+958). *Fraudulent Conveyances*, ¶58.

7015. Question of fact—Voluntary conveyances—

Bill of sale of personal property, made without other consideration than a promise of the transferee to sell the property at auction and apply the proceeds to the payment of an indebtedness due from the transferor to transferee upon an executory contract for the sale of land, held fraudulent as to creditors (123-444, 143+1190). *Fraudulent Conveyances*, ¶78.

If a transfer of a farm to plaintiff was made with intent to defraud her husband's creditors, whether she can hold the produce of the farm as against such creditors depends upon whether she, acting in good faith, raised such produce for her own use and benefit, and this is ordinarily a question for the jury (135-105, 160+249). *Husband and Wife*, ¶133½.

7017. Assignment of debt—

Failure to file the assignment of a debt as provided by this section does not render such assignment absolutely void, but casts upon the assignee the burden of proving that it was made in good faith and for value (124-160, 144+763). *Assignments*, ¶46.

7019. "Conveyance" defined—

124-346, 145+112.

CHAPTER 69

LIENS FOR LABOR AND MATERIAL

FOR IMPROVEMENT OF REAL ESTATE

7020. Mechanics, laborers and materialmen—Whoever contributes to the improvement of real estate by performing labor, or furnishing skill, material or machinery, for any of the purposes hereinafter stated, whether under a contract with the owner of such real estate or at the instance of any agent, trustee, contractor or subcontractor of such owner, shall have a lien upon said improvement, and upon the land on which it is situated or to which it may be removed, for the price or value of such contribution; that is to say, for the erection, alteration, repair, or removal of any building, fixtures, bridge, wharf, fence, or other structure thereon, or for grading, filling in or excavating the same, or for clearing or grubbing land, or for digging or repairing any ditch, drain, well, fountain, cistern, reservoir, or vault thereon, or for laying, altering or repairing any sidewalk, curb, gutter, paving, sewer, pipe, or conduit in or upon the same, or in or upon the adjoining half of any highway, street or alley upon which the same abuts. (Amended '17 c. 285 § 1)

Cited (134-35, 158+829).

Construction of statute—The statutes conferring mechanics' liens are highly remedial, and are to receive a liberal construction in order that the object in enacting them may not be defeated (125-45, 145+620). Mechanics' Liens, ¶5.

Insurance money—One furnishing material for the construction of a building on a homestead has no claim or lien on the proceeds of insurance accruing on the destruction of the building by fire (132-372, 157+504). Homestead, ¶79.

Performance—Findings and evidence as to performance by subcontractor (see 132-357, 157+500).

Materials "furnished"—Actual delivery upon the premises of material sold and furnished a contractor for use in the construction of a building is not necessary, as against the owner, in order to effect a lien. Delivery of the material to the contractor, in good faith, is all that is necessary; and the owner may protect himself from fraudulent conduct of the contractor by requiring a bond from him to pay for materials purchased (127-277, 149+300, L. R. A. 1915E, 302). Mechanics' Liens, ¶48.

Materials furnished in good faith for the improvement of realty may be lienable, though not actually used in the work (127-138, 149+6, L. R. A. 1915B, 708). Mechanics' Liens, ¶48.

Where a materialman delivered to one house material, a part of which was intended for a house being constructed by the same contractor on an adjoining lot, and, on being informed of the mistake, charged the same to such other house, but such material was never in fact removed to or used in the construction of such house, a lien nevertheless attached thereto, which was superior to a mortgage placed thereon during the construction of the buildings (131-31, 154+511). Mechanics' Liens, ¶48; Mortgages, ¶151(3).

Material lienable—A lien may be enforced for lumber furnished for forms in the construction of a concrete foundation, though it was not incorporated into the structure (161+259). Mechanics' Liens, ¶47.

Coal and gasoline for generation of power, dynamite for blasting, lubricant, lighting materials and supplies, and materials for the erection of a toolhouse, furnished excavating contractors, held lienable under this section, as contributions to the improvement of defendant's realty; but supplies for and repairs and parts of the excavating machinery are not lienable, as they merely contribute to the contractor's personal property (127-138, 149+6, L. R. A. 1915B, 708). Mechanics' Liens, ¶45.

Improvements—Under the rule stated in 61-132, 63+257, 52 Am. St. Rep. 582, lighting fixtures do not become a part of the realty, at least under ordinary circumstances, and the value of such fixtures was improperly included in the amount adjudged to be a lien on the property (128-288, 150+1083). Mechanics' Liens, ¶31.

A combination steam heating and power plant placed by a tenant in the leased building will support a mechanic's lien only in the event that the plant constitutes a fixture in the legal sense (125-107, 145+964). Mechanics' Liens, ¶31.

That a tenant gave a chattel mortgage on articles to be attached to the leased premises did not preclude the attaching of a mechanic's lien for labor in making the attachment, though the mortgage was given with the assent of the landlord (125-107, 145+964). Chattel Mortgages, ¶138(1).

Architect's lien—An architect furnishing plans and specifications for the construction of a building is entitled to a lien on the building and land, though he does not supervise the con-

struction, and though the owner abandons the building project (128-261, 150+908, L. R. A. 1915D, 204). Mechanics' Liens, ¶35, 86.

Lien for cost of bond—Where the building contract provided that if the owner wanted a surety bond he should pay therefor, the cost of such bond required by the owner and paid for by the contractor was not a lienable claim (130-214, 153+594). Mechanics' Liens, ¶51.

[7020—]1. Contractor diverting payments from mechanics, laborers and materialmen guilty of larceny—That any contractor or subcontractor on any improvement to real estate within the meaning of Section 7020, General Statutes 1913, who, with intent to defraud, shall use the proceeds of any payment made to him on account of such improvement by the owner of such real estate or person having any improvement made, for any other purpose than the payment for labor, skill, material and machinery contributed to such improvement, while any such labor performed, or skill, material or machinery furnished for such improvement at the time of such payment remains unpaid for, shall be guilty of larceny of the proceeds of such payment so used. ('15 c. 105 § 1)

This section is not invalid as class legislation, or as imposing imprisonment for debt (158+829). Constitutional Law, ¶83(2), 208(6); Larceny, ¶2.

7021. Extent and amount of lien—

128-261, 150+908, L. R. A. 1915D, 204; note under § 7020.

The contract price as agreed upon between the lien claimant and the party ordering the work is prima facie evidence of its value as against the owner (125-107, 145+964). Mechanics' Liens, ¶281(1).

7022. Lines of railway, telegraph, telephone, etc.—

128-261, 150+908, L. R. A. 1915D, 204; note under § 7020.

Plaintiff, performing services for Minnesota telephone company on its system and on unauthorized branch line into Wisconsin, was entitled to enforce a lien for the full amount against the main line system in Minnesota (162+884). Mechanics' Liens, ¶182.

Where plaintiff performed labor for a telephone company in constructing its system in Minnesota and a branch line in Wisconsin, the lien was valid against whatever interest company had in the system (162+884). Mechanics' Liens, ¶187.

7023. When lien attaches—Notice—

128-261, 150+908, L. R. A. 1915D, 204; note under § 7020.

Evidence held to show that a principal contractor agreed that a contemplated mortgage should be prior to mechanics' liens and that such liens would be discharged by the contractor (130-214, 153+594). Mechanics' Liens, ¶281(3).

A mortgage to secure future advances, which the mortgagee obligates himself to make, has priority over mechanics' liens which attach after the mortgage is given, but before the money is paid out (134-156, 158+918). Mortgages, ¶151(3).

Under this section all liens attach at the time the first item of material or labor is furnished for the beginning of the improvement, though the architect prepared plans some time earlier (134-156, 158+918, distinguishing 128-261, 150+908, L. R. A. 1915D, 204). Mechanics' Liens, ¶166.

Where material is furnished and delivered upon the premises for an improvement thereon in good faith, the lien attaches at the time of delivery, and will not be defeated by an abandonment of the improvement (161+259). Mechanics' Liens, ¶111(2).

A lien for materials delivered to one of two buildings in course of construction by the same contractor on adjoining lots attached to the other building and was superior to a mortgage placed on the buildings during their construction, where the materialman was informed of his mistake, and charged the items to such other building, though the material was never in fact moved thereto or used therein (131-31, 154+511). Mechanics' Liens, ¶48; Mortgages, ¶151(3).

7024. Vendors, consenting owners, etc.—

Under this section improvements upon real estate are presumed to be made upon authority of the legal owner (134-408, 158+787). Mechanics' Liens, ¶279.

A corporation held charged with the knowledge of its secretary that improvements to its realty were being made at the instance of its lessee (124-317, 145+37). Corporations, ¶428(7).

Leased realty is subject to a mechanic's lien for improvements made at the instance of a lessee, when the lessor knows that the improvements are being made and fails without excuse to give the notice required by this section (124-317, 145+37). Mechanics' Liens, ¶78.

Evidence held to authorize finding that the owner consented to the making of improvements by a tenant (125-107, 145+964). Mechanics' Liens, ¶281(3).

By the provision of this section that when improvements are made by one person all persons interested in the land, otherwise than as bona fide incumbrancers or lienors, shall be deemed to have authorized such improvements, a presumption of consent is raised against the owner; but if he does not consent he may protect his interests by serving or posting notices, and the burden of proving such notices is on the owner (161+259). Mechanics' Liens, ¶279.

The owner of a ground lease, who assigned the leasehold and afterwards purchased the fee, held not permitted to defeat mechanics' liens accruing after his assignment (125-207, 145+1072). *Mechanics' Liens*, ¶63.

The burden of proving the giving or posting of notice under this section is upon the defendant landowner. (124-317, 145+37). *Mechanics' Liens*, ¶272.

Painting and decorating a building and putting on a section of new roof to fit the premises for occupancy by a tenant, are not "repairs" (125-107, 145+964). *Mechanics' Liens*, ¶26.

7026. Lien statement—

Time of filing—It is error to instruct that if some minor finishing touches were made upon the building, subsequent to the filing of the lien statement, in completion of the original contract, the lien was invalidated (123-353, 143+975). *Mechanics' Liens*, ¶132(5).

Where an architect prepared plans and specifications under a contract for a percentage of the total cost, the architect to supervise the construction, a lien statement filed within 90 days from the time that the owner repudiated the contract with the architect was in time, though it was filed more than 90 days after the last work was performed on the plans and specifications, the building project having been abandoned (128-281, 150+908, L. R. A. 1915D, 204). *Mechanics' Liens*, ¶132(9).

Where work done under several contracts is practically continuous and constitutes one job, only one lien statement need be filed (125-107, 145+964). *Mechanics' Liens*, ¶129.

Evidence held to show that work done was under two separate and unrelated contracts, so that there was no lien for materials furnished under one of the contracts which was finished more than 90 days prior to the filing of the lien (161+257). *Mechanics' Liens*, ¶132(11).

Findings of court that last items were not furnished with wrongful purpose of extending time for perfecting lien held sustained by the evidence (124-132, 144+472). Appeal and Error, ¶1009(2).

Excess in lien account—A light excess in a lien account filed, due to a clerical error in adding the items, held harmless (124-317, 145+37). *Mechanics' Liens*, ¶157(3).

Description of premises—Where the owner has two lots in one inclosure, and constructs a building on one of them, the fact that a lien statement ascribes the lien to the other lot does not invalidate the lien (125-45, 145+620). *Mechanics' Liens*, ¶157(1).

Misnomer of owner—Designation of the owner as First Presbyterian Church, instead of Trustees of First Presbyterian Church, held an amendable defect, so that judgment based thereon was binding on surety on contractor's bond to discharge liens (133-429, 158+709).

7027. Two or more buildings—

128-261, 150+908, L. R. A. 1915D, 204; note under § 7020.

7028. Liens foreclosed by action—

128-261, 150+908, L. R. A. 1915D, 204; note under § 7020.

A receiver may be appointed in an action to foreclose a mechanic's lien on a showing that it is necessary to protect or preserve the property (161+407). *Mechanics' Liens*, ¶283.

7029. Summons, pleadings, etc.—

128-261, 150+908, L. R. A. 1915D, 204; note under § 7020.

If plaintiff or any other claimant fails to establish his lien or presents a defective pleading, it does not affect the rights of other lienholders, nor preclude them from making proof of all facts essential to the enforcement of their respective liens. An assertion of title to the property involved in an answer is put in issue without further pleading (161+387). *Mechanics' Liens*, ¶252.

The personal representative of the contractor, who died before commencement of an action to foreclose a materialman's lien, is a proper party, and the determination of the incidental issue as to the amount due plaintiff is conclusive upon the estate of the deceased contractor (124-132, 144+472). Executors and Administrators, ¶438(9), 453(4).

7031. Bill of particulars—

An affidavit that the averments in the pleading are true of the pleader's own knowledge, and that the attached bill of items is true and correct, is a sufficient verification of such bill of items (128-288, 150+1083). *Mechanics' Liens*, ¶271(19).

7033. Judgment, sale, redemption, etc.—

There can be no personal judgment with execution until after the foreclosure sale. The judgment in this case construed to intend a personal judgment and execution only after foreclosure sale (130-214, 153+594). *Mechanics' Liens*, ¶303(2).

The personal representative of a deceased contractor is a proper party in an action by a materialman to foreclose his lien, and a determination in such action of the incidental issue as to the amount due plaintiff is conclusive upon the estate of the deceased contractor (124-132, 144+472). Executors and Administrators, ¶438(9), 453(4).

A defendant, holding a lien claim, after trial, but before findings and adjudication, released his lien and elected to take personal judgment against the principal contractor with immediate execution. Held, that no legal prejudice could result to the debtor from such judgment, and the same is sustained (130-214, 153+594). *Mechanics' Liens*, ¶305.

7034. Severance of building, resale, receiver, etc.—

A receiver may be appointed in an action to foreclose a mechanic's lien on a sufficient showing that it is necessary to protect or preserve the property (161+407). *Mechanics' Liens*, § 283.

PERSONALTY IN POSSESSION**7036. For keeping, repairing, etc.—**

In so far as this act gives one transporting and storing property a lien superior to a chattel mortgage, it is not violative of the constitutional inhibition against impairment of contract rights or the taking of property without due process of law (124-144, 144+750). *Constitutional Law*, § 161, 300.

It was intended by this section that one transporting and storing property at the request of a chattel mortgagor in legal possession should have a lien superior to the interest of the chattel mortgagee (124-144, 144+750). *Chattel Mortgages*, § 138(1).

MOTOR-VEHICLES**7053. To whom given—Against whom—Amount—**

"Owner" includes a conditional vendee and a mortgagor in possession. This act is not to be given a more liberal construction than the statute relating to mechanics' liens for improvements on land (135-17, 159+1080). *Bailment*, § 18(2).

7054. Statement and notice—When and where filed—To state what—

Where upon different dates and as separate transactions labor or material is furnished for the repair of a motor vehicle, a single lien statement may be filed if the first item occurred within 60 days from the date of filing (135-17, 159+1080). *Bailment*, § 18(2).

7055. Action to enforce—Notice—Judgment—Sale—

A single action may be maintained to foreclose a lien embraced in a single statement, though consisting of items of labor or material furnished on different dates and as separate transactions within a period of 60 days prior to date of filing of statement (135-17, 159+1080). *Bailment*, § 18(2).

ON LOGS AND TIMBER**7058. To whom given—Against whom—**

A claim for furnishing teams and equipment for such teams is not within this section (128-5, 150+216). *Logs and Logging*, § 26(7).

7059. Lien statement—Filing—Assignment of lien—

A lien statement, showing neither demand for payment before the filing nor that the labor was terminated by the employer's act or by completion of the work, is insufficient (128-5, 150+216). *Logs and Logging*, § 33(2).

7060. Termination of lien—

Where work was commenced October 1st, and completed thereafter in the course of continuous employment, only that portion done between the date mentioned and April 1st following is within the provisions of this section (128-5, 150+216). *Logs and Logging*, § 28.

IN OTHER CASES**7082. For threshing grain—**

Cited (124-144, 144+750).

GENERAL PROVISIONS**7085. Inaccuracies in lien statement—**

A lien statement, otherwise in accordance with the statute, was not invalidated by the fact that it recited that the materials were furnished "for the following described improvements," without stating for what particular improvement. Where the owner had two lots in a single inclosure, the fact that a mechanic's lien statement for materials furnished for a house on one of the lots ascribed the lien to the other lot did not invalidate the lien (125-45, 145+620). *Mechanics' Liens*, § 157(1).

Where a lien claimant, who had performed his contract only in part, filed a lien for the amount which would have been due if he had performed in full, he thereby knowingly claimed more than was due, and lost his right to a lien (128-288, 150+1083). *Mechanics' Liens*, § 157(3).

[CHAPTER 69A]

[PLEDGES]

[7087—]1. **Pledgee permitted to buy at public sale**—Whenever a pledgee of personal property has a remedy to enforce his lien upon such property by sale thereof in case of default, by virtue of the contract creating such lien, any such pledgee, his legal representatives or assigns, may, fairly and in good faith, purchase such property or any part thereof, at any sale so made; provided, that such sale, if such pledgee shall wish to bid thereat, shall be at public auction and upon like notice as is required in case of execution sales of personal property in this state, and shall be conducted by the sheriff or his deputy of the county, or by a constable of the town in which such pledged property or some part thereof is situated at the time of giving such notice. ('17 c. 305 § 1)

CHAPTER 70

MARRIAGE

7090. Marriages prohibited—

Evidence held to warrant directing a verdict for plaintiff in an action for breach of promise to marry, the defense in which was that defendant was subject to epileptic fits and was incompetent to marry under this section (123-498, 144+213, 49 L. R. A. [N. S.] 757, Ann. Cas. 1915A, 295). Breach of Marriage Promise, ~~§~~34.

CHAPTER 71

DIVORCE

7106. What marriages void—

162+454.

7107. What voidable—

Essentials to common-law marriage stated (122-407, 142+593). Marriage, ~~§~~18, 40(4), 50(5).

7109. What not annulled—

Essentials of common-law marriage stated (122-407, 142+593). Marriage, ~~§~~18, 40(4), 50(5).

7111. Grounds for divorce—

Subd. 3. Cruel and inhuman treatment—Evidence held to support finding of cruel and inhuman treatment (127-96, 148+1074). Divorce, ~~§~~130.

Evidence held sufficient to establish cruel and inhuman treatment (126-65, 147+825). Divorce, ~~§~~27(8), 130.

The evidence held not to justify the court on appeal in holding that a finding of cruelty was not supported (135-179, 160+494). Divorce, ~~§~~130, 150(2).

The jurisdiction of the Minnesota courts to grant a divorce for cruel and inhuman treatment is not affected by the fact that the acts and conduct alleged to constitute the cruel and inhuman treatment occurred outside the state, or by the fact that defendant has never resided in the state, or that the parties were not living together as husband and wife at the time that the acts occurred (132-340, 156+664). Divorce, ~~§~~59, 61.

Evidence held to support a finding that a wife was guilty of cruel and inhuman treatment of her husband (132-340, 156+664). Divorce, ~~§~~130.

Subd. 4. Sentence to imprisonment—This section applies to sentences passed before its enactment (135-179, 160+494). Venue, ~~§~~52(1).

Subd. 4 of this section does not limit the cause for divorce to future sentences of imprisonment, but a conviction and imprisonment initiated prior to the enactment of the statute, but

after marriage, is ground for divorce (135-259, 160+687, L. R. A. 1917C, 159). Divorce, ¶13. Finding as to existence and continuance of imprisonment in a state prison held sufficient (135-259, 160+687). Divorce, ¶150(2).

Subd. 5. Desertion—Evidence held to support a finding of willful desertion of her husband by the wife (130-342, 153+745). Divorce, ¶37(15).

Evidence held to establish willful desertion (132-321, 156+348). Divorce, ¶133.

Where the wife brought an action for limited divorce, which remained undetermined for two years, defendant was entitled to amend his answer and demand a divorce on the ground of willful desertion by the wife, and in computing the period of such desertion time elapsing during the pendency of the action may be considered (130-342, 153+745). Divorce, ¶104.

7115. Requisites of complaint—

Necessity of demand for alimony (see 130-472, 153+864). Divorce, ¶203. See, also, note under § 7128, post.

7121. Custody of children, etc.—

Held that plaintiff, the mother, was, and that defendant was not, a fit person to have the custody of a seven year old son (132-321, 156+348). Divorce, ¶298(4).

Discretion of the trial court in refusing to disturb the custody of minor children placed by plaintiff with her mother while plaintiff was receiving treatment at a hospital for a nervous breakdown alleged to have resulted from defendant's cruel and inhuman treatment held not abused (135-307, 160+778). Divorce, ¶298(1).

Decree awarding alimony does not relieve the husband of his duty to support the children of the marriage, unless the decree makes express provision for such support (161+525). Divorce, ¶306, 324.

Award of custody of children to wife, suing for divorce, where she fails to establish grounds for divorce or for separation (see 161+525). Divorce, ¶294. See, also, note under § 7140.

7122. Same—On judgment—

161+525: notes under §§ 7121, 7140.

As to the custody of a child five years old, whose parents are divorced, the welfare of the child is the primary consideration, and requires that the custody be given to the mother, unless she is an unfit person to be charged with its bringing up (132-467, 156+1). Habeas Corpus, ¶99(3).

7123. Order may be revised—

The test of the validity of an order modifying a decree as to custody, so as to permit the father to visit the children at reasonable times, is whether there was an abuse of discretion. The welfare of the child being the prime consideration, where it appeared that a child was sensitive and of a nervous disposition, so that undue excitement was detrimental to his health, the denial of a father's application to modify the decree as to custody, so as to permit him to visit the child, was not an abuse of discretion (135-473, 159+1068). Divorce, ¶303(2, 3).

7128. Property of husband—Permanent alimony—

An award of alimony held reasonable and fair, but subject to modification to secure life support of wife (127-96, 148+1074). Divorce, ¶240(1).

In a suit for divorce, where personal service is made on defendant, the court has power to allow alimony, though the complaint contains no specific demand therefor and the defendant does not answer (130-472, 153+864). Divorce, ¶203.

Under this section and § 7129, the court has power to alter and modify its decree for alimony, so as to make it a specific lien on land acquired by the husband after the alimony decree was rendered (135-397, 161+148, L. R. A. 1917C, 1140). Divorce, ¶245(1).

Provision for alimony does not relieve the husband of his duty to support the children, unless the decree makes express provision for such support (161+525). Divorce, ¶306.

7129. Order for alimony, etc., revised—

129-538, 152+1101; 135-397, 161+148, L. R. A. 1917C, 1140; note under § 7128, ante.

7133. Effect of divorce—Name of wife—

A judgment for divorce does not abrogate a separation agreement by which the husband agrees to pay a specified monthly sum for the maintenance and support of the wife "for and during the term of her natural life, or while this separation continues," the judgment not making other provision for the support of the wife (161+402). Husband and Wife, ¶280.

LIMITED DIVORCES

7134. Separation—

Construction of this act as affected by construction placed upon it by the court of the state from which the statute was adopted (see 161+525). Statutes, ¶226.

7137. Defenses—

Award of custody of children to wife suing for divorce, though she fails to establish ground for divorce or for separation (see 161+525). Divorce, ¶294. See, also, note under § 7140.

7139. As to alimony and wife's property—

Award of custody of children to wife in her suit for divorce in which she fails to establish grounds for divorce or separation (see 161+525). Divorce, *§*294. See, also, note under § 7140.

7140. When separation not granted—

In an action by a wife for a divorce in which she fails to establish facts authorizing a divorce or decree of separation, but in which it appears that the parties are living apart, the court may award the custody of the children to her and require the husband to contribute toward their support (161+525). Divorce, *§*294.

CHAPTER 72

MARRIED WOMEN

7143. Property rights—

Under this section a married woman may carry on business on her own account, and the avails of her contracts are not liable for her husband's debts (135-106, 160+249). Husband and Wife, *§*149(1).

In suit by wife for conversion, it is no defense that the property was delivered to the husband on his rebonding it in replevin (127-177, 149+2). Trover and Conversion, *§*22.

Chattel mortgage executed by husband on his wife's separate property is not binding on her, where she did not authorize its execution, either actually or by way of estoppel (127-177, 149+2). Husband and Wife, *§*137(7).

Where a deed to the wife was adjudged to be a mortgage, money deposited in court to redeem therefrom could not be subjected to the payment of a judgment against the husband (128-126, 150+396). Mortgages, *§*608½.

7146. Liability of husband and wife—

Cited (129-190, 151+976, L. R. A. 1915D, 1111, Ann. Cas. 1916E, 897).

This section does not change the rule that as between husband and wife the duty to provide necessaries rests upon the husband (162+1060). Husband and Wife, *§*19(1).

Where the wife pays for such necessities out of her own funds as a contribution toward the family expenses and without expecting reimbursement therefor, she is not entitled to recover the amount so paid from the estate of her husband; but where she makes such payments without an understanding that they are a contribution by her toward such expenses for which no reimbursement is expected, she may recover the amount thereof from his estate (162+1060). Husband and Wife, *§*40.

7147. Contracts between husband and wife—

By virtue of this section a husband could not make a valid contract for the sale of his wife's land, either as her agent or otherwise, and such a contract is not binding on her unless she subsequently adopts and confirms it (131-299, 154+1086). Husband and Wife, *§*138(3).

CHAPTER 73

ADOPTION AND CHANGE OF NAME

7151. Adoption—Petition and consent—Any resident of the state may petition the district court of the county in which he resides for leave to adopt any child not his own. If the petitioner be married the spouse shall join in the petition. All petitions for the adoption of a child who is a ward or pupil of the state public school shall be made jointly by the person desiring to adopt such child and the superintendent of the state public school. The state board of control may determine by resolution that the joinder of the superintendent in the petition shall be its consent to the adoption of the ward or pupil, as prayed for in the petition. A person of full age may be adopted. (Amended '17 c. 222 § 1)

1917 c. 222 § 1 amends G. S. 1913 c. 73, so as to read as set forth in sections therein and herein numbered 7151-7161. Section 2 repeals G. S. 1913 §§ 7152, 7157, 7158, and all acts or parts of acts inconsistent herewith. By § 3 the act takes effect January 1, 1918.

7152. Investigation by board of control—Report, etc.—Upon the filing of a petition for the adoption of a minor child the court shall notify the state board of control. It shall then be the duty of the board to verify the allegations of the petition; to investigate the condition and antecedents of the child for the purpose of ascertaining whether he is a proper subject for adoption; and to make appropriate inquiry to determine whether the proposed foster home is a suitable home for the child. The board shall as soon as practicable submit to the court a full report in writing, with a recommendation as to the granting of the petition and any other information regarding the child or the proposed home which the court shall require. No petition shall be granted until the child shall have lived for six months in the proposed home. Provided, however, that such investigation and period of residence may be waived by the court upon good cause shown, when satisfied that the proposed home and the child are suited to each other. ('17 c. 222 § 1; old § 7152 repealed, '17 c. 222 § 2)

7153. Consent, when necessary—Except as herein provided no adoption of a minor shall be permitted without the consent of his parents, but the consent of a parent who has abandoned the child, or who cannot be found, or who is insane or otherwise incapacitated from giving such consent, or who has lost custody of the child through divorce proceedings or the order of a juvenile court, may be dispensed with, and consent may be given by the guardian, if there be one or if there be no guardian, by the state board of control. In case of illegitimacy the consent of the mother alone shall suffice. In all cases where the child is over fourteen years old his own consent must be had also. (Amended '17 c. 222 § 1)

7154. Hospital may be custodian, when—Any hospital incorporated under the laws of this state for the purpose of caring for unmarried women who are about to become mothers, and for illegitimate children born in such hospital or left in its care by the mothers for the purpose of being placed in suitable homes, may be the custodian of the persons of such children. (Amended '17 c. 222 § 1)

7155. Notice of hearing—When the parents of any minor child are dead or have abandoned him, and he has no guardian in the state, the court shall order three weeks' published notice of the hearing on such petition to be given; the last publication to be at least ten days before the time set therefor. In every such case the court shall cause such further notice to be given to the known kindred of the child as shall appear to be just and practicable; provided that if there be no duly appointed guardian, a parent who has lost custody of a child through divorce proceedings, and the father of an illegitimate child who has acknowledged his paternity in writing or against whom paternity has been duly adjudged shall be served with notice in such manner as the court shall direct in all cases where the residence is known or can be ascertained. (Amended '17 c. 222 § 1)

7156. Decree—Change of name—If upon the hearing the court shall be satisfied as to the identity and relationship of the persons concerned, and that the petitioners are able to properly rear and educate the child, and that the petition should be granted, a decree shall be made and recorded in the office of the clerk, setting forth the facts, and ordering that from the date thereof the child shall be the child of the petitioners. If desired, the court, in and by said decree, may change the name of the child. (Amended '17 c. 222 § 1)

Requisites, effect, and proof of common-law adoption (see 124-85, 144+455). Adoption, 6, 17, 21, 23.

Enforcement in equity of oral adoption (see 131-56, 154+741, L. R. A. 1916D, 421). Adoption, 6.

A child adopted by a widow after her husband's death is not entitled to the benefits of subd. 9 of § 8208 of the Workmen's Compensation Act (133-265, 158+250). Master and Servant, 388.

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7157. Status of adopted child—Upon adoption such child shall become the legal child of the persons adopting him, and they shall become his legal parents, with all the rights and duties between them of natural parents and legitimate child. By virtue of such adoption, he shall inherit from his adopting parents or their relatives the same as though he were the legitimate child of such parents, and shall not owe his natural parents or their relatives any legal duty; and, in case of his death intestate the adopting parents and their relatives shall inherit his estate, as if they had been his parents and relatives in fact. ('17 c. 222, § 1; old § 7157 repealed, '17 c. 222 § 2)

7158. Annulment of adoption—If within five years after his adoption a child develops feeble-mindedness, epilepsy, insanity or venereal infection as a result of conditions existing prior to the adoption, and of which the adopting parents had no knowledge or notice, a petition setting forth such facts may be filed with the court which entered the decree of adoption, and if such facts are proved the court may annul the adoption and commit the child to the guardianship of the state board of control. In every such proceeding it shall be the duty of the county attorney to represent the interests of the child. ('17 c. 222 § 1; old § 7158, repealed '17 c. 222 § 2)

7159. Records of adoption—The files and records of the court in adoption proceedings shall not be open to inspection or copy by other persons than the parties in interest and their attorneys and representatives of the state board of control, except upon an order of the court expressly permitting the same. (Amended '17 c. 222 § 1)

7160. Change of name—Procedure—Penalty—A person who shall have resided in any county for one year may apply to the district court thereof to have his name changed in the manner herein specified. He shall describe in his application all lands in the state in or upon which he claims any interest or lien, and shall appear personally before the court and prove his identity by at least two witnesses. If he be a minor, his guardian or next of kin shall also appear. Every person who, with intent to defraud, shall make a false statement in any such application, shall be guilty of a misdemeanor. (Amended '17 c. 222 § 1)

7161. Order—Filing copies—If it shall appear to the court to be proper, it shall grant the application, and set forth in the order a description of the lands, if any, in which the applicant claims to have an interest. The clerk shall file such order, and record the same in the judgment book. If lands be described therein, a certified copy of the order shall be filed for record, by the clerk, with the register of deeds of each county wherein any of the same are situated. Any such order shall not be filed, nor any certified copy thereof be issued, until the applicant shall have paid to the clerk the cost of such record. The fee of the clerk shall be two dollars, and for each certified copy of the order, fifty cents. (Amended '17 c. 222 § 1)

CHAPTER 73A

DEPENDENT, NEGLECTED AND DELINQUENT CHILDREN

7162-7196. [Repealed.]

See § [7196-]35.

7162—Cited (123-382, 143+984, 49 L. R. A. [N. S.] 597).

The juvenile court act does not abrogate the function of the writ of habeas corpus to determine the question of custody of dependent children (123-508, 144+157). Habeas Corpus, 46, 99(1).

7168—Where a child, committed to the care of an association, leaves the home of persons to whom its custody is given by the association for sufficient cause, and finds a home with other persons, the prime consideration, on habeas corpus by the association, is the child's welfare,

and not the legal right to custody. The determination in such case does not necessarily interfere with the plan of administration under this section and § 7174, especially in absence of radical differences in religious faiths of the contending custodians. However, the question of religious faith is an important element in the final determination. Welfare of child held to require her to be left in respondent's care, subject to visitation of relator, an eleemosynary association, to which her custody had been awarded by the juvenile court (123-508, 144+157). Habeas Corpus, ~~69~~99(3).

7174—A determination in habeas corpus is not necessarily in conflict with the general plan of the juvenile court act, though the legislative preference as to the religious beliefs of the custodians, indicated by this section, is disregarded, such preference being given due consideration in considering the welfare of the child (123-508, 144+157). Habeas Corpus, ~~69~~99(1).

7178—A child dependent upon the public for support is within this section, and hence within § 7197, though the sole reason of such dependency is the financial inability of its parent to support it, and though there is neither delinquency on the part of the child nor other unfitness on the part of the parent (123-382, 143+984, 49 L. R. A. [N. S.] 597). Infants, ~~12~~12½.

7179—This section repeals § 7163, giving exclusive jurisdiction in counties having a population of, not less than 33,000 (123-382, 143+984, 49 L. R. A. [N. S.] 597). Infants, ~~18~~18.

[7196—]1. Terms defined—This act shall apply only to children under the age of eighteen years. For the purposes of this act the term "dependent child" shall mean a child who is illegitimate; or whose parents, for good cause, desire to be relieved of his care and custody; or who is without a parent or lawful guardian able to adequately provide for his support, training and education, and is unable to maintain himself by lawful employment, except such children as are herein defined as "neglected" or "delinquent." The term "neglected child" shall mean a child who is abandoned by both parents, or, if one parent is dead, by the survivor, or by his guardian; or who is found living with vicious or disreputable persons, or whose home, by reason of improvidence, neglect, cruelty, or depravity on the part of the parents, guardian or other person in whose care he may be, is an unfit place for such child; or whose parents or guardian neglect and refuse, when able to do so, to provide medical, surgical or other remedial care necessary for his health or well being; or, when such child is so defective in mind as to require the custodial care and training of the state school for the feeble-minded, neglect and refuse to make application for his admission to said institution; or who, being under the age of twelve years, is found begging, peddling or selling any articles or singing or playing any musical instrument upon the street, or giving any public entertainment, or who accompanies or is used in aid of any person so doing. The term "delinquent child" shall mean a child who violates any law of this state or any city or village ordinance; or who is habitually truant or incorrigible; or who knowingly associates with vicious or immoral persons; or who without just cause and without the consent of his parents, guardian or other custodian absents himself from his home or place of abode, or who knowingly visits any place which exists, or where his presence is permitted, in violation of law; or who habitually uses obscene, profane or indecent language; or who is guilty of lewd or immoral conduct involving another person. The word "association" shall mean any corporation which includes in its purpose the care or disposition of children coming within the meaning of this act. ('17 c. 397 § 1)

By § 36 the act takes effect January 1, 1918.

[7196—]2. Same—Jurisdiction of district court—Jury trial—Jurisdiction of probate court—The district court in counties now or hereafter having a population of more than 33,000 inhabitants shall have original and exclusive jurisdiction in all cases coming within the terms of this act. In all trials in the district court under this act, except as hereinafter provided, any person interested therein may demand a jury; or a judge of his own motion may order a jury to try the case. In counties now or hereafter having a population of not more than 33,000 inhabitants the probate court shall have jurisdiction over the appointment of guardians of dependent, neglected or delinquent children for the purposes of this act. The jurisdiction of both the district and probate courts over cases of dependency, neglect and delinquency arising under this act shall extend to all persons resident or found within the territorial limits of the court, although the evidentiary facts showing such dependency, neglect or delinquency may have occurred outside such territorial limits. ('17 c. 397 § 2)

[7196—]3. **Same—Designation of judge of district court—Juvenile court—Title of proceedings**—In counties having more than 33,000 population the judges of the district court shall at such times as they shall determine designate one of their number whose duty it shall be to hear all cases arising under this act, unless absent or disabled, in which case another judge shall be temporarily assigned for said purposes; and such designation shall be for the period of one year unless otherwise ordered. The judge of the juvenile court so designated shall devote his first service and all necessary time to the business of the juvenile court, and this work shall have precedence over all his other court work. When deemed advisable the district judges may designate two judges for the purposes and subject to the provisions specified in this section. A special court room, to be designated as the juvenile court room, shall be provided for the hearing of such cases, and the findings of the court shall be entered in a book or books to be kept for that purpose, and known as the "juvenile record," and the court may for convenience be called the juvenile court of the appropriate county. The title of proceedings in the juvenile court, excepting prosecutions under sections 27 and 28 of this act [7196—27, 7196—28], shall be substantially as follows:

Juvenile Court, County of.....,
In the matter of.....as a dependent (or
neglected or delinquent, as the case may be) child. ('17 c. 397 § 3)

[7196—]4. **Same—Clerk to assign deputy—Salary—Duties**—The clerk of the district court shall assign a deputy, subject to the approval of the judge of the juvenile court, who shall have special charge of the duties to be performed by the clerk in connection with the juvenile court, and whose duty it shall be to keep all books and records thereof, to issue summons and process, to attend to correspondence in connection with the court, and in general to perform such duties in the administration of the business of the court, whether or not herein specifically enumerated, as the judge may direct. Such deputy may be specially appointed for the purposes specified herein, in addition to other deputies provided for by law. In counties where more than one judge of the juvenile court has been designated a deputy clerk may be assigned for each. In counties having not less than 150,000 population the salary of the deputy clerk assigned pursuant to this section shall be \$1,800 per annum. When not engaged in the duties pertaining to the juvenile court the deputy shall do such work in the clerk's office as the clerk may direct. When such deputy is absent the clerk, or another deputy, may perform the duties herein specified. The clerk may from time to time change the assignment of such deputy with the approval of the judge. When no assignment of a deputy has been made pursuant to this section the clerk of the district court shall perform the duties herein specified. ('17 c. 397 § 4)

[7196—]5. **Same—Bailiff in counties having not less than 150,000 inhabitants—Duties—Salary**—In counties having not less than 150,000 population a bailiff of the juvenile court may be appointed by the judge of the court. He shall serve four years, unless removed by the judge for cause, and shall be in attendance at all sessions of the court, make service of summons, writs, warrants and process issued out of the court, and perform such other duties as may be directed by the judge. He shall have all the authority of a deputy sheriff, and when his services are not required by the juvenile court he may, with the consent of the judge, be called upon by the sheriff to serve as such deputy. In case of his absence the sheriff shall, upon request of the judge, assign a deputy to perform his duties. The bailiff shall receive a salary of \$1,500 per annum, which sum shall include all expense incurred by him in the performance of his duties within the county. ('17 c. 397 § 5)

[7196—]6. **Same—Probate court as juvenile court—Records—Appeal**—In counties of not more than 33,000 population the judge of probate shall provide himself with a suitable book in which to record all proceedings for the appointment of guardians under the provisions of this act, at the expense of the county, and shall record in said book all proceedings taken in each case coming before him under this act, but need not record any evidence tak-

en except as it shall seem to him proper and necessary. The reasons for appointing a guardian shall be entered therein and any parent or the attorney for any child may appeal from the final disposition of the guardianship matter by complying with the law regulating appeals from probate courts. When acting under the provisions of this act the probate court may for convenience be called the juvenile court of the appropriate county. ('17 c. 397 § 6)

[7196—]7. **Same—Petition**—Any reputable person resident in the county, having knowledge of a child in the county who appears to be either dependent, neglected or delinquent; and any agent of the state board of control or the state department of labor and industries may file with the judge or clerk of the court having jurisdiction in the matter a petition in writing, setting forth the facts and verified by affidavit. The petition shall set forth the name and residence of each parent, if known, and if both are dead or the residence unknown, then the name and residence of the legal guardian, or if there be none, or if his residence is unknown, then the name and residence of some near relative, if there be one and his residence is known. It shall be sufficient that the affidavit is upon information and belief. ('17 c. 397 § 7)

[7196—]8. **Same — Summons — Notice — Warrant — Hearing — Temporary care of child**—Upon the filing of the petition a summons shall be issued by the judge or clerk of the court requiring the person having custody or control of the child, or with whom the child may be, to appear with the child at a place and time stated in the summons, which time shall not be less than twenty-four hours after service. Such place may be in the county seat of the county, or in any other city or village in the county, at the discretion of the court. It shall be sufficient to confer jurisdiction if service is made at any time before the day fixed in the summons for the return thereof; but in such case the court if so requested shall not proceed with the hearing earlier than the second day after the services. The summons shall be served as provided by law for the service of summons in civil actions, and may be served by a probation officer. The parents of the child, if living, and their residence is known, or its legal guardian, if one there be, or if there is neither parent or guardian, or if his residence is not known, then some relative, if there be one and his residence is known, shall be notified of the proceedings, and in any case the judge may appoint some suitable person to act in behalf of the child. Where the person to be notified resides within the county, service of notice shall be the same as service of the summons, but in any other case service of notice shall be made in such manner as the court may direct. If the person summoned as herein provided shall fail without reasonable cause to appear and abide the order of the court, or bring the child, he may be proceeded against as in case of contempt of court. In case the summons cannot be served or the party served fails to obey the same, and in any case when it shall be made to appear to the court that such summons will be ineffectual, or that the welfare of the child requires that he shall be brought forth-into the custody of the court, a warrant may issue on the order of the court, either against the parent or guardian or the person having custody of the child or with whom the child may be, or against the child himself. On the return of the summons or other process, or on the appearance of the child with or without summons or other process in person before the court, and on the return of the service of notice, if there be any person to be notified, or a personal appearance or written consent to the proceedings of the person or persons, if any to be notified, or as soon thereafter as may be, the court shall proceed to hear and dispose of the case in a summary manner. Pending the final disposition of any case, the child may be retained in the custody of the person having charge of the same, or may be kept in some suitable place provided by the village, city or county authorities, or in some suitable place designated by the court, at the expense of the county. ('17 c. 397 § 8)

[7196—]9. **Same—Probation officers—Duties—Compensation**—The court shall have authority to appoint one or more persons of good character to serve as probation officers during the pleasure of the court. Such probation officers shall act under the orders of the court in reference to any child com-

mitted to their care, and in the performance of their duties shall have the general powers of a peace officer; and it shall be their duty to make such investigations with regard to any child as may be required by the court before, during or after the trial or hearing, and to furnish to the court such information and assistance as may be required; to take charge of any child before or after trial or hearing whenever so directed by the court, and to keep such records and to make such reports to the court as the court may order. Probation officers heretofore or hereafter appointed under the provisions of chapter 154, General Laws of Minnesota, 1899, and all laws amendatory thereof, being sections 9385, 9386, 9387, 9388, 9389, 9390 and 9391, General Statutes 1913, shall be subject to the orders of the court in reference to all matters covered by the provisions of this act. Probation officers appointed under authority of this act shall serve without compensation from the county; provided that in counties of more than 33,000 population a majority of the judges of the district court may direct the payment of such salary to probation officers as may be approved by the county board; and provided further that in other counties probation officers shall receive the same fees as constables for similar services, including all travel, and in addition thereto such salary as may be fixed by the judge and approved by the county board. ('17 c. 397 § 9)

[7196—]10. Same—Expert assistance in certain cases—In any county of more than 150,000 population the court may establish a department of the juvenile probation system of such county for the physical and mental diagnosis of cases of children who are believed to be physically or mentally diseased or defective, and may appoint as special probation officers a competent nurse and a duly qualified physician, whose salaries shall be fixed by the judge with the approval of the county board. ('17 c. 397 § 10)

[7196—]11. Same—Dependent or neglected children—Disposition—When any child shall be found to be dependent or neglected, within the meaning of this act, the court may make an order committing the child to the care of the state board of control, or of the state public school or some other suitable state institution, or to the care of some reputable citizen of good moral character, or to the care of some association willing to receive it, embracing in its objects the purpose of caring for or obtaining homes for dependent or neglected children, which association shall have been accredited as provided by law. In appropriate cases the child may be left with the parents subject to such remedial supervision as the court may direct. The court may, when the health or condition of the child shall require it, cause the child to be placed in a public hospital or institution for treatment or special care; or in a private hospital or institution which will receive it for like purpose without charge. Provided, however, that in no case shall a dependent child be taken from his parents without their consent unless, after diligent effort has been made to avoid such separation, the same shall be found needful in order to prevent serious detriment to the welfare of such child. ('17 c. 397 § 11)

[7196—]12. Same—Guardianship—Adoption—In any case where the court shall award a dependent or neglected child to the care of the state board of control, or of any association or individual in accordance with the provisions of this act, the child shall, unless otherwise ordered, become a ward, and be subject to the guardianship of the state board of control or of the association or individual to whose care it is committed; but such guardianship shall not include the guardianship of any estate of the child, except as provided in section 17 of this act [7196—17]. Such board, association or individual shall have authority to place such child in a family home, with or without indenture, and may be made party to any proceeding for the legal adoption of the child, and may by its or his attorney or agent appear in any court where such proceedings are pending and consent to such adoption. Provided, however, that when adoption proceedings for any such child are commenced in any other court than the court which originally committed such child, then notice of the filing of the petition in such adoption proceedings shall be filed in the office of the clerk of the court which originally committed

such child, at least thirty days before any final decree of adoption shall be entered. ('17 c. 397 § 12)

[7196—]13. **Same—Hearing when continued—Commitment by district court—Discharge**—In the case of a delinquent child the court may continue the hearing from time to time and may place the child in the care or custody of a probation officer, and may allow the child to remain in his own home, subject to the visitation of the probation officer, such child to report to the probation officer as often as may be required, and subject to be returned to the court for further or other proceedings whenever such action may appear to be necessary; or the court may cause the child to be placed in a suitable family home, subject to the friendly supervision of a probation officer and the further order of the court; or it may authorize the child to be boarded out in some suitable family home, in case provision is made by voluntary contribution or otherwise for the payment of the board of such child, until suitable provision may be made for the child in a home without such payment. A child found delinquent in the district court may be committed by the court to the state training school for boys or the Minnesota home school for girls, or to any institution established by law or incorporated under the laws of this state that may care for delinquent children, or to any place provided by the town or county suitable to the care of such children. In appropriate cases the court may commit the child to the care and custody of some association that will receive it, embracing in its objects the care of neglected or dependent children. In no case shall a child be held under any such commitment beyond the age of twenty-one years. A child committed to such an institution or association shall be subject to the control of the board of managers thereof, and the said board shall have power to parole the child on such conditions as it may prescribe, and the court shall have power to discharge the child from custody whenever in its judgment such action will be for the best interests of the child. Every child committed to the state training school for boys or the Minnesota home school for girls shall be subject to the guardianship of the state board of control, and to all the laws and regulations relating to discipline in and parole and discharge from said schools. No child shall be discharged from either of said schools within one year after commitment without the approval of the committing court; thereafter such approval shall not be required. ('17 c. 397 § 13)

[7196—]14. **Same—County home schools**—In counties of over 33,000 population the county board shall have authority to purchase, lease, erect, equip and maintain a county home school for boys and girls, or a separate home school for boys and a separate home school for girls, and the same may, with the approval of the district court judges, be a separate institution, or it may be established and operated in connection with any other organized charitable or educational institution; but the plans, location, equipment and operation of said county home school shall in all cases have the approval of the judges of the district court. There shall be a superintendent or matron, or both, appointed for such home, who shall be probation officers of the juvenile court, and shall be appointed and removed by the district judges. The salaries of the superintendent, matron and other employes shall be fixed by the judges of the district court, subject to the approval of the county board. The juvenile court may place in said home school, for a period of not more than six months under any order, any child coming before said court, and any child who is placed in such home school may be released therefrom by order of said court at any time. Provided, that a delinquent child may be committed during the pleasure of the court to any county home school, or any orphans' home conducted by a charitable institution, where the inmates are taught the branches of study usually pursued in the public schools, and where agriculture, horticulture, gardening or domestic science is studied and carried on by the inmates thereof; but in no case shall such child be detained beyond his majority. The county board of all counties to which this section applies is hereby authorized, empowered and required to provide the necessary funds to make all needful appropriations to carry out the provisions of this section. The board of education, commissioner of edu-

cation or other persons having charge of the public schools in any city of the first or second class, in a county where a county home school is maintained pursuant to the provisions of this section, shall have authority to furnish all necessary instructors, school books and school supplies for the boys and girls placed in any such home school. ('17 c. 397 § 14)

[7196—]15. Same—Existing home schools continued—All juvenile detention homes, farms and industrial schools heretofore established under section 5, chapter 285, Laws 1905, as amended by chapter 172, Laws 1907, and chapter 353, Laws 1911, (being section 7166, General Statutes, 1913), or chapter 83, Laws 1913, (being sections 7194, 7195 and 7196, General Statutes, 1913) or chapter 228, Laws 1915, are hereby declared to be county home schools within the meaning of this act; and all the provisions hereof relating to county home schools shall apply thereto. ('17 c. 397 § 15)

1915 c. 228, above referred to, is repealed by § [7196—]35.

[7196—]16. Same—Guardians for delinquents in probate court—When any child is found delinquent in a probate court the court may appoint the state board of control to be the guardian of such child, or any institution or association incorporated under the laws of this state that may care for delinquent children and become their guardian, or any suitable city, county or state institution. The provisions of section 13 [7196—13] relative to the control, parole and discharge of delinquent children committed by district courts shall apply to delinquent children placed under guardianship by probate courts. In all cases girls committed to the state home school for girls shall be accompanied to said school by a woman. ('17 c. 397 § 16)

[7196—]17. Same—Property of child—If any child placed under guardianship by a probate court pursuant to the provisions of this act has any property, the income thereof shall, unless more than is necessary, be applied to the education of such child; and upon cause shown to the court the principal or any part thereof may be used for the same purpose. ('17 c. 397 § 17)

[7196—]18. Same—Information with commitment—Whenever a juvenile court shall commit a child to a state institution or to the guardianship of the state board of control there shall be delivered with the order of commitment a copy of the findings and order of the court relative to such child, and a brief statement of such particulars of the case as the board of control may require. ('17 c. 397 § 18)

[7196—]19. Same—Evidence in delinquency cases protected—Any disposition of a child dealt with for delinquency under this act, or any evidence given in such cause, shall not in any civil, criminal or other cause or proceeding whatever, in any court, be lawful or proper evidence against such child for any purpose; provided, however, that nothing in this section shall be construed to relate to subsequent proceedings in a juvenile court. ('17 c. 397 § 19)

[7196—]20. Same—Religious belief of parents—The court in committing any child, or appointing a guardian for him under the provisions of this act, shall place him so far as it deems practicable in the care and custody of some individual holding the same religious belief as the parents of the child, or with some association which is controlled by persons of like religious faith with the parents. ('17 c. 397 § 20)

[7196—]21. Same—Criminal proceedings—The adjudication of a juvenile court that a child is delinquent shall in no case be deemed a conviction of crime; but the court may, in its discretion, cause any alleged delinquent child of the age of twelve years or over to be proceeded against in accordance with the laws that may be in force governing the commission of and punishment for crimes and misdemeanors, or for the violation of municipal ordinances, by an order directing the county attorney to institute such prosecution as may be appropriate. ('17 c. 397 § 21)

[7196—]22. Same—Transfer of cases from municipal courts, etc.—Whenever any minor is arraigned upon a criminal charge before a judge of a municipal court or justice of the peace, otherwise than upon an order transfer-

ring the case from a juvenile court, the judge or justice shall inquire concerning the age of such minor, and if it satisfactorily appears that he is under the age of eighteen years the case shall forthwith be transferred to the juvenile court of the county. Such transfer shall be effected by filing with the judge or clerk of the juvenile court a certificate showing the name, age and residence of the child, the names and addresses of his parents or guardian, if known, the specific charge upon which he has been arraigned, and the name and residence of the complainant. The certificate shall have the effect of a petition filed in the juvenile court; but the judge of said court may in his discretion direct the filing of a new petition, which shall supersede such certificate. The judge of the municipal court or the justice shall have power to commit such child to appropriate custody, when deemed advisable, for a period of not more than one week and to fix reasonable bail, upon furnishing which said child shall be returned to the custody of his parents or guardian to respond to such proceedings as shall be had in the juvenile court. ('17 c. 397 § 22)

[7196—]23. **Same—Arrest—Warrants**—Nothing in this act shall be construed to forbid the arrest of any person, with or without warrant, as is now or hereafter may be provided by law; or to forbid the issue of warrants by magistrates as so provided. ('17 c. 397 § 23)

[7196—]24. **Same—Privacy of hearings and records**—Upon the trial or hearing of cases arising under this act the court shall exclude the general public from the room wherein such trial or hearing is had, admitting only such persons as may have a direct interest in the case, witnesses, officers of the court and accredited persons interested in the study of social conditions. The records of all cases may be withheld from indiscriminate public inspection at the discretion of the court; but such records shall at all times be open to the inspection of any child to whom the same relates, and to his parents and guardian. For the purposes of this section the records of juvenile probation officers and county home schools shall be deemed records of the court. This section shall not be deemed to apply to prosecutions under Sections 27 and 28 [7196—27, 7196—28]. ('17 c. 397 § 24)

[7196—]25. **Same—Support by parents**—In any case in which the juvenile court of a county having a population of over 33,000 shall find a child dependent, neglected or delinquent, it may, in the same or a subsequent proceeding, upon the parents of said child, or either of them, being duly summoned or voluntarily appearing proceed to inquire into the ability of such parent or parents to support the child or contribute to his support, and if the court shall find such parent or parents able to support the child or contribute thereto, the court may enter such order or decree as shall be according to equity in the premises, and may enforce the same by execution, or in any way in which a court of equity may enforce its orders or decrees. ('17 c. 397 § 25)

[7196—]26. **Same—Unlawful removal of child**—Any unlawful removal, attempt to remove or interference with a child committed by a juvenile court to the custody or guardianship of any institution, association or individual is hereby declared to be contempt of court and punishable accordingly. ('17 c. 397 § 26)

[7196—]27. **Same—Responsibility of parents, etc.—Penalty**—In all cases when any child shall be found to be neglected or delinquent as defined in this act the parent or parents, legal guardian or person having the custody of such child, or any other person who by any act, word or omission encourages, causes or contributes to the neglected or delinquent condition of such child, when such act, word or omission is not by other provisions of law declared to be a felony, is guilty of a misdemeanor. The fact that a child has been adjudged more than twice to be delinquent on account of conduct occurring while in the custody of his parents or the same guardian shall be presumptive evidence that such parents or guardian are responsible for his last adjudged delinquency. ('17 c. 397 § 27)

[7196—]28. **Same—Jurisdiction**—In counties having a population of over 33,000 the juvenile court shall have jurisdiction of the offenses described in Section 27 [7196—27]. Prosecutions hereunder shall be begun by complaint duly verified and filed in the juvenile court of the county. If the defendant is found guilty the court may impose conditions upon him; and so long as he shall comply therewith to the satisfaction of the court the sentence imposed may be suspended. ('17 c. 397 § 28)

[7196—]29. **Same—Expenses in probate court, how paid**—The expenses of the proceedings in probate courts provided for by this act, including the care of children during continuances, when not with relatives, the necessary expenses for travel and board incurred by the judge of probate when holding court in places other than the county seat, and fifteen cents for each folio to the judge of probate for all records made by him, additional to his salary, shall be paid by the parents of the child, if of sufficient means, and if not so paid, by the county upon the certificate of the judge of probate. Suit to recover the same from the parents shall be brought by the county attorney when a judgment therefor could probably be collected. ('17 c. 397 § 29)

[7196—]30. **Same—Payment of salaries, etc.**—All salaries required to be paid under the provisions of this act shall be paid by the county in equal monthly installments, and all authorized fees and expense money shall be paid by the county upon proper certification by the judge. ('17 c. 397 § 30)

[7196—]31. **Same—Judges and officers serving when act takes effect**—All designations of a district judge and assignments of a deputy clerk to serve in a juvenile court, and all appointments of a bailiff and probation officers in and for such a court, heretofore or hereafter made according to law and in force when this act takes effect, are hereby continued in force during the period for which they were made or until otherwise ordered by the court. ('17 c. 397 § 31)

[7196—]32. **Same—Act to be liberally construed**—This act shall be liberally construed to the end that its purpose may be carried out, to-wit: That in all proceedings arising under its provisions the court shall act upon the principle that to the child concerned there is due from the state the protection and correction which he needs under the circumstances disclosed in the case; and that whenever it is necessary to provide for him elsewhere than with his parents his care, custody and discipline shall approximate as nearly as may be that which ought to be given by his parents; and that in all cases where it can properly be done he shall be placed in an approved family home and become a member of the family by legal adoption or otherwise. ('17 c. 397 § 32)

[7196—]33. **Same—Partial invalidity of act**—The provisions of this act are severable one from another and in their application to the persons and interests affected thereby. The judicial declaration of the invalidity of any provision, or the application thereof, shall not affect the validity of any other provision, or the application thereof. ('17 c. 397 § 33)

[7196—]34. **Same—Laws not repealed**—Nothing herein contained shall be construed to repeal any of the provisions of Sections 189, 9385, 9386, 9387, 9388, 9389, 9390, 9391, 9394, 9395, 9396 or 9397, General Statutes 1913; or chapter 3, Laws 1915 [1957—5, 1957—6]. ('17 c. 397 § 34)

[7196—]35. **Same—Laws repealed**—Sections 233, 234, 235, 7162, 7163, 7164, 7165, 7166, 7167, 7168, 7169, 7170, 7171, 7172, 7173, 7174, 7175, 7176, 7177, 7178, 7179, 7180, 7181, 7182, 7183, 7184, 7185, 7186, 7187, 7188, 7189, 7190, 7191, 7192, 7193, 7194, 7195 and 7196, General Statutes 1913; and chapters 83, 134 and 228, Laws 1915, and all other acts and parts of acts inconsistent with this act are hereby repealed. ('17 c. 397 § 35)

7197-7199. [Repealed.]

See § [7199—]18.

7197—The general statutory system of providing for the poor (§ 3067) did not curtail the power of the legislature to pass this act (123-382, 143+084, 49 L. R. A. [N. S.] 597). Infants, 6-12.

The relief provided by this section is not a matter of purely local concern, and its provisions are operative in a county wherein the town system of caring for the poor prevails, as well as elsewhere, and also in a city in such county, though it maintains its own pauper system. A child dependent upon the public for support is within § 7178, and hence within this section, though the sole reason of such delinquency is the financial inability of its parent to support it, and though there is neither delinquency on the part of the child nor other unfitness on the part of the parent. There was no error or impropriety in entertaining a joint application for relief in behalf of several children of the same parents residing with the mother. In such case the court was not required to make the same order with reference to all the children. The probate court held, on the facts, properly to have exercised its power to grant relief under this section (123-382, 143+984, 49 L. R. A. [N. S.] 597). Infants, $\text{C}\text{--}12\frac{1}{2}$.

[7199—]1. Allowances to mothers—When made—Amount—Whenever any child under the age of sixteen years who is not lawfully entitled to apply for and receive an employment certificate is found by juvenile court to be dependent the court shall, when requested so do to [to do], and in the same proceeding, make its findings upon the following points:

- (a) Whether the mother of the child is a widow;
- (b) If her husband is living, whether he is an inmate of a penal institution under a sentence which will not terminate within three months after the date of such finding; or is an inmate of a state insane asylum or hospital, or of a state hospital for inebriates; or is unable to labor for the support of his family by reason of physical disabilities; or is and for one year has been under indictment for the crime of abandoning such child;
- (c) Whether the dependency of the child is due to the poverty of the mother without neglect, improvidence or other fault on her part;
- (d) Whether the mother is otherwise a proper person to have the custody of the child;
- (e) Whether the welfare of the child will be subserved by permitting him to remain in the custody of the mother, if adequate means of support shall be provided;
- (f) Whether the mother is a citizen of the United States or whether she or her husband has made declaration of intention to become a citizen and has resided two years in the state and one year in the county.

Upon the making and filing of findings that the mother is a widow or that support is not obtainable from her husband by reason of one of the alternatives specified in subdivision (b), together with findings in the affirmative upon the points specified in subdivisions (c), (d), (e), (f), the courts shall further find, and order the payment of the sum of money which it deems necessary for the county to allow the mother in order to enable her to bring up the child properly in her own home, not exceeding fifteen dollars per month for one child and not exceeding ten dollars per month for each additional child; provided, however, that no allowance shall be made when the husband is under indictment for abandonment unless the court is satisfied that he is a fugitive from justice and that the mother has in good faith assisted and will continue to assist in all reasonable efforts to apprehend him. ('17 c. 223 § 1)

By § 19 the act takes effect January 1, 1918.

[7199—]2. Same—Manner of payment—Subsequent order—A certified copy of such order shall be filed with the county auditor and thereafter, so long as such order remains in force and unmodified, it shall be the duty of the county auditor each month to draw his warrant on the general revenue fund of the county in favor of the mother for the amount specified in such order. The warrant shall be delivered to the clerk of the court making the order and shall by the latter be delivered to the mother upon her executing a receipt therefor, to be retained by the clerk with the other records in the proceedings relating to the child. It shall be the duty of the county treasurer to pay the warrant out of the general revenue fund of the county when properly presented. No such allowance shall be paid toward the support of any child who has become lawfully entitled to apply for and receive an employment certificate or who has ceased to be under the immediate care of the mother. The court may for cause duly shown revoke or modify any order previously made. A certified copy of any such subsequent order shall forthwith be filed with the county auditor and thereafter warrants shall be drawn and payments made only in accordance with such subsequent order. ('17 c. 223 § 2)

[7199—]3. Same—Court may impose conditions—The court may require any mother to whom an allowance is made under this act to make a reasonable effort to learn the English language and customarily use the same in her family. The court may also require the mother to do such remunerative work outside her own home as she can do without detriment to her health or neglect of her family and may limit the number of days per week when she may be so employed. ('17 c. 223 § 3)

[7199—]4. Same—County child welfare board—Duty to assist court—In counties where there is a county child welfare board as provided by law such board, when so requested by the court, shall consider applications for allowance under this act and shall advise the court concerning their merit, the sum, if any, which ought to be allowed and the special conditions, if any, upon which the same ought to be granted. ('17 c. 223 § 4)

[7199—]5. Same—Investigation and supervision—Official reports as basis for findings—Before making any order or allowance under this act it shall be the duty of the court, either through the judge in person or through the county child welfare board and its agents or a probation officer designated for that purpose or an official investigator appointed as provided in section 6 of this act, to make inquiry as to all the points necessary to establish the right to such allowance; and particularly to inquire whether the surroundings of the household, including its other members, are such as to make for the good character of children growing up therein; to ascertain all the financial resources of the family, including the ability of its members of working age to contribute to its support and if need be to urge upon such members their proper contribution to take all lawful means to secure support for the family from relatives under legal obligation to render such support; to ascertain the ability of other relatives to assist the family and to interview individuals, societies and other agencies which may be deemed appropriate sources of such assistance. Every family to which an allowance has been made shall be visited at its home by a representative of the court at least once in three months; and after each visit the person making the same shall make and keep on file as a part of the official record of the case a detailed statement of the condition of the home and family, and all other data which may assist in determining the wisdom of the allowance granted and the advisability of its continuance; and the court shall at least once in each year reconsider every case in which an allowance has been made, and take such action as the facts then existing shall warrant. All findings and orders provided for herein may be made upon the written reports of official investigators with like effect as if based upon competent testimony given in open court. ('17 c. 223 § 5)

[7199—]6. Same—Official investigators—In counties having over 200,000 population the judge of the juvenile court may appoint one or more persons for the investigation of applications for allowances under this act, whose duty it shall be to visit the homes of the applicants and ascertain all the relevant facts and circumstances, including the facts specified in the preceding section and make report in such form as the court may require. Each person so appointed shall receive a salary of \$1080 per annum to be paid in monthly installments out of the county treasury, together with all actual expenses certified by the judge to have been necessarily incurred by them in the performance of their duties. ('17 c. 223 § 6)

[7199—]7. Same—Reconsideration upon complaint—Appeal—Upon complaint being made to the county attorney by a taxpayer of the county that any person is unlawfully receiving an allowance out of the county funds on account of an alleged dependent child it shall be the duty of the county attorney to investigate such complaint and if he finds it to have probable cause to bring it to the attention of the court by appropriate proceedings. The court shall hear such evidence and argument as shall be offered and shall thereupon make its order confirming, modifying or setting aside the order complained of, from which decision an appeal may be taken as in a civil action. ('17 c. 223 § 7)

[7199—]8. **Same—What property bar to allowance**—The ownership by a mother of personal property of the value of one hundred dollars, exclusive of appropriate clothing and household furniture and of such tools, implements and domestic animals as in the opinion of the court it is expedient to retain for the purpose of reducing the expense or increasing the income of the family or of real estate not used as a home; or of real estate, when used as a home; of a value disproportionate to the actual needs of the family, shall be a bar to any allowance under this act. ('17 c. 223 § 8)

[7199—]9. **Same—Terms defined**—The word "husband" in this act may denote either the father of a dependent child or a stepfather of whose family the child is or has been a member. The word "mother" may denote either the mother or a step-mother of whose family the child is a member. ('17 c. 223 § 9)

[7199—]10. **Same—Allowance to grandmother**—Whenever the court shall be of the opinion that the welfare of a dependent child will be best served by permitting him to live in the family of his grandmother, all the provisions of this act shall be so construed as to apply to such grandmother and her husband in like manner as to the mother and her husband. ('17 c. 223 § 10)

[7199—]11. **Same—Fraud in procuring allowance—Penalty**—Any person fraudulently procuring or attempting to procure an allowance under this act for a person not entitled thereto, by any act which does not constitute a felony, shall be guilty of a misdemeanor. ('17 c. 223 § 11)

[7199—]12. **Same—Duties of board of control**—It shall be the duty of the state board of control to promote efficiency and uniformity in the administration of this act. To that end it shall advise and co-operate with courts and shall supervise and direct county child welfare boards with respect to methods of investigation, oversight and record-keeping; shall devise, recommend and distribute blank forms; shall by its agents visit and inspect families to which allowances have been made; shall have access to all records and other data kept by courts and other agencies concerning such allowances; and may require such reports from clerks of the courts, child welfare boards, probation officers and other official investigators as it shall deem necessary. ('17 c. 223 § 12)

[7199—]13. **Same—Payments to be reported to state officers—State to allow one-third**—During the month of January in each year the county auditor shall certify under oath, in duplicate, to the state auditor and the state board of control the amount paid out by the county during the preceding calendar year for allowances under this act; and if the board of control shall approve the same it shall cause its approval to be indorsed by its chairman on the certificate received by the state auditor; whereupon the state auditor shall draw his warrant to the county treasurer for one-third of the amount so certified to have been paid out by the county and the state treasurer shall pay the same and the county treasurer shall credit the sum so paid to the general revenue fund of the county. ('17 c. 223 § 13)

[7199—]14. **Same—Improper administration—Duty of board of control**—If in any county this act shall be unlawfully or improvidently administered or if any of the agencies administering it shall wrongfully refuse to co-operate with the state board of control as provided in section 12 [7199—12], the board may refuse to approve and indorse the certificate of disbursements provided for in section 13 [7199—13]. Such refusal shall be subject to judicial review upon appropriate proceedings. ('17 c. 223 § 14)

[7199—]15. **Same—Act to be liberally construed**—This act shall be liberally construed with a view to accomplishing its purpose, which is hereby declared to be to enable the state and its several counties to co-operate with responsible mothers in rearing future citizens, when such co-operation is necessary on account of relatively permanent conditions, in order to keep the mother and children together in the same household, reasonably safeguard the health of the mother and secure to the children during their tender years her personal care and training. ('17 c. 223 § 15)

[7199—]16. **Same—Action against relative preserved**—Nothing herein shall be deemed to be inconsistent with any right of action against a relative of a poor person conferred by sections 3067 and 3068, General Statutes, 1913. ('17 c. 223 § 16)

[7199—]17. **Same—Orders made under former law**—All orders of court granting county aid to mothers of dependent children under the provision of chapter 130, laws 1913, (being sections 7197, 7198 and 7199, General Statutes, 1913), in force where this act takes effect, shall continue in force until confirmed, modified or set aside pursuant to the provisions of this act. ('17 c. 223 § 17)

[7199—]18. **Same—Laws repealed**—Sections 7197, 7198 and 7199, General Statutes, 1913, are hereby repealed. ('17 c. 223 § 18)

PART III

CIVIL ACTIONS AND PROCEEDINGS

CHAPTER 74

PROBATE COURTS

GENERAL PROVISIONS

7200. Establishment, sessions, etc.—

Collateral attack on proceedings (122-1, 141+851). Executors and Administrators, \S 29(2).

The probate court is a court of superior jurisdiction, and the same presumptions attend its acts as in the case of superior courts of common law (124-492, 145+378). Courts, \S 202(5).

PROBATE COURTS GENERALLY

7204. Court first acquiring jurisdiction has exclusive jurisdiction—

Where the probate court of the county of a decedent's domicile has first acquired jurisdiction over the estate, the probate court of a county wherein decedent had a temporary abode at the time of his death is not thereafter entitled to take jurisdiction (130-269, 153+520). Courts, \S 475(2, 3).

7205. Counties in which administration shall be had—

130-269, 153+520; note under § 7204, ante.

A probate court in this state has jurisdiction to appoint a special administrator to maintain an action for the wrongful death in this state of a nonresident (129-279, 152+413).

7211. Incidental powers—

Scope and extent of jurisdiction of probate court (see 133-124, 158+234). Courts, \S 200 $\frac{1}{4}$.

7215. [Superseded.]

See § [7215—]1.

[7215—]1. Salaries of judges and clerk hire in counties having less than 100,000 inhabitants—The probate judges in all the counties in this state where compensation is not fixed by special laws shall receive in full compensation for all services rendered by them annual salaries to be paid in twelve equal monthly installments, based on the then last preceding completed state or national census, and on the then last preceding assessed valuation of real and personal property, as fixed by the Minnesota state tax commission as follows:

In counties whose population is less than six thousand, seven hundred fifty dollars; if the population is six thousand and less than nine thousand, one thousand dollars, and in addition thereto fifty dollars for every one million dollars assessed valuation not to exceed three hundred dollars; if the population is nine thousand and less than thirteen thousand eleven hundred fifty dollars, and in addition thereto fifty dollars for every one million dollars assessed valuation not to exceed four hundred dollars; if the population is thirteen thousand and less than seventeen thousand, thirteen hundred dollars, and in addition thereto fifty dollars for every one million dollars assessed valuation not to exceed five hundred dollars; if the population is seventeen thousand and less than twenty-two thousand, fourteen hundred fifty dollars, and in addition thereto fifty dollars for every one million dollars assessed valuation not to exceed six hundred dollars; if the population is twenty-two thousand and less than twenty-eight thousand, fifteen hun-

(871)

dred dollars, and in addition thereto fifty dollars for every one million dollars assessed valuation not to exceed seven hundred fifty dollars; if the population is twenty-eight thousand and less than thirty-six thousand, sixteen hundred dollars, and in addition thereto fifty dollars for every million dollars assessed valuation not to exceed nine hundred fifty dollars; if the population is thirty-six thousand and less than forty-five thousand, eighteen hundred dollars, and in addition thereto fifty dollars for every one million dollars assessed valuation not to exceed one thousand dollars; if the population is forty-five thousand and less than one hundred thousand, three thousand dollars.

In addition to the foregoing salaries, annual compensation for clerk hire for probate judges in counties having a population of less than one hundred thousand shall be as follows:

In all counties having a population of less than eight thousand the county board may allow clerk hire in an amount not to exceed one-fourth of the salary of the probate judge; if the population is eight thousand and less than thirteen thousand, three hundred dollars, and such further sum as the county board may allow not to exceed a total of seven hundred dollars; if the population is thirteen thousand and less than seventeen thousand, four hundred dollars and such further sum as the county board may allow not to exceed a total of eight hundred dollars; if the population is seventeen thousand and less than twenty-two thousand, five hundred fifty dollars, and such further sum as the county board may allow not to exceed a total of nine hundred dollars; if the population is twenty-two thousand and less than twenty-eight thousand, six hundred fifty dollars, and such further sum as the county board may allow not to exceed a total of twelve hundred dollars; if the population is twenty-eight thousand and less than thirty-six thousand, seven hundred dollars, and such further sum as the county board may allow not to exceed a total of fourteen hundred dollars; if the population is thirty-six thousand and less than forty-five thousand, twelve hundred dollars and such further sum as the county board may allow not to exceed a total of fifteen hundred dollars; if the population is forty-five thousand and less than one hundred thousand, fifteen hundred dollars, and such further sum as the county board may allow not to exceed a total of two thousand dollars. Provided, however, that no sums whatever shall be paid or allowed for clerk hire in excess of the amounts actually paid or due for help employed to perform necessary excess clerical labor in the respective offices of judges of probate as hereinbefore mentioned. ('17 c. 328 § 1)

By § 3 the act takes effect January 1, 1919.

[7215—]2. **Same—Laws repealed, etc.**—This act shall not affect or repeal chapter 63 of General Laws, 1915 [7220—3 to 7220—6]. All other acts and parts of acts inconsistent with this act are hereby repealed. ('17 c. 328 § 2)

[7220—]1. **Salary of clerk and employees in counties having 220,000 and not more than 325,000 inhabitants**—That the salary of the clerk and employees of probate courts in all counties of this state having according to the then last completed state or national census the population of not less than 220,000 inhabitants and not more than 325,000 inhabitants is hereby fixed as follows: The clerk of probate at the sum of twenty-seven hundred and fifty dollars (\$2,750.00) per annum, a deputy clerk at the sum of eighteen hundred dollars (\$1,800.00) per annum, one court reporter who shall also act as secretary to the judge of probate in all matters pertaining to his official duties who shall be paid the sum of fifteen hundred dollars (\$1,500.00) per annum, an inheritance tax clerk at the sum of fifteen hundred dollars (\$1,500.00) per annum, a registration clerk at the sum of fifteen hundred dollars (\$1,500.00) per annum, a file clerk at the sum of twelve hundred dollars (\$1,200.00) per annum, three general clerks one of whom shall be paid twelve hundred dollars (\$1,200.00) per annum each and two at the sum of one thousand dollars (\$1,000.00) per annum each; all of said salaries shall be paid in equal monthly installments out of the county treasury of such counties upon the warrants of the county auditor. ('17 c. 434 § 1)

1917 c. 434 is entitled "An act to amend chapter 142, Laws 1915," etc., although it does not expressly amend the same. Section 3 repeals inconsistent acts, etc.

[7220—]2. **Same—To what counties applicable**—Whenever according to the then last state or national census the population of any county of this state which now has a population of less than 220,000 inhabitants, shall acquire not less than that number, such county shall at once become subject to the provisions of this act, and whenever, according to such census the population of any county shall exceed 325,000 inhabitants or fall under 220,000 inhabitants, the provisions of this act at the expiration of thirty days from the final filing of the enumeration of such county shall not longer apply thereto. ('17 c. 434 § 2)

[7220—]3. **Salary of judges in certain counties**—In each county of this state now or hereafter containing not less than eighty congressional townships, and now or hereafter having an assessed valuation of more than twenty-five million dollars, and less than fifty million dollars, the probate judge shall receive an annual salary of one hundred dollars for each one million dollars of the total assessed valuation of said county as determined for the then next preceding year. Provided, however, that such annual salary shall not exceed three thousand dollars, and shall be in full compensation for all services rendered, and in lieu of all fees heretofore permitted to be retained by probate judges in such counties. ('15 c. 63 § 1)

Section 5 repeals inconsistent acts, etc.

[7220—]4. **Same—Fees—Record**—In such counties the probate judge shall keep in his office a record of all fees collected by him under the provisions of Section 3634, Revised Laws 1905 [7212], and of all other fees allowed by law to be collected by him; and he shall pay the money so received into the county treasury at the end of each calendar month, and take the treasurer's receipt therefor. ('15 c. 63 § 2)

[7220—]5. **Same—Salary of clerk**—In addition to such salary of the probate judge, the clerk of the probate court in such counties shall receive an annual salary of three hundred sixty dollars, and in addition thereto such further sum as the county board may allow, not to exceed a total annual salary of twelve hundred dollars. ('15 c. 63 § 3)

[7220—]6. **Same—Salary, etc., how paid**—Such salary and clerk hire shall be paid in equal monthly installments out of the county treasury, upon warrants of the county auditor in favor of the person entitled thereto, in the same manner as other county officers are paid. ('15 c. 63 § 4)

[7220—]7. **Additional clerk hire in certain counties**—In all counties of this state containing a population of not less than 45,000 and not more than 75,000 and in which the salary of the judges of probate is now or may hereafter be less than that provided for by the General Laws of the State of Minnesota, the county commissioners of such county may allow a sum not to exceed \$900.00 per annum for additional clerk hire in said probate office in addition to the sum now allowed by law for the salary of the clerk of probate. Said amount so to be allowed to be fixed by the county commissioners for the year 1917 at their next meeting after the passage of this act and annually thereafter on the first meeting of each year, and said clerk hire shall in all cases be for actual services rendered and shall be paid monthly upon the presentation of a certificate of the judge of probate to the county auditor who shall issue to such person entitled thereto his warrant upon the county treasurer of said county for the amount therefor. ('05 c. 155, amended '17 c. 128 § 1)

[7220—]8. **Same—Not to affect existing laws**—This act shall in no way affect or modify any existing laws applicable to said county relating to the salaries and compensation of judges of probate and clerks of probate. ('17 c. 128 § 2)

SUPP. G.S. MINN. '17—43

PROBATE PRACTICE

7227. Proceedings, how begun—

Appointment of a special administrator without a petition therefor is a nullity (128-112, 150+385). Executors and Administrators, ¶22(3), 29(2).

[7229—]1. Orders and citations to be issued by clerk, when—The judge of the probate court of any county in this state in which county there is a clerk of the probate court may by written authorization duly recorded in the office of the clerk of said probate court authorize said clerk to issue the following orders and citations and sign the same in the name of the clerk instead of having the same signed in the name of the judge to-wit:

1st. Citation for hearing of petition for letters of administration.

2nd. Citations for hearing petition for the admission of a will to probate and the issuance of letters testamentary or of administration with will annexed.

3rd. Citation for hearing, petition for decree of descent.

4th. Orders limiting the time to file claims and fixing the date of hearing of said claims.

5th. Citations for hearing petition to sell, lease or mortgage land.

6th. Citations for hearing petition for settlement and distribution in estates of deceased persons. ('17 c. 216 § 1)

This act is entitled "An act to amend" 1915 c. 286, etc.

[7229—]2. Newspaper for publication, how designated—Whenever published notice or citation is required to be given in any proceeding in probate court, the judge of probate shall order such notice or citation to be published in such legal newspaper within the county as shall be designated by the petitioner in such proceedings or by his attorney; provided, that a notice to creditors to present claims against an estate shall be published in such legal newspaper within the county as shall be designated by the representative of the estate in which such notice is given, or by his attorney. If such designation is not made, a judge of probate may order the notice to be published in any legal newspaper within the county. ('17 c. 151 § 1)

7233. Notice of filing orders—

The notice required by this section does not limit the time for appeal from the judgment rendered (133-20, 157+709). Courts, ¶202(5).

DESCENT OF PROPERTY

7236. Real estate in general—Posthumous children—

A parent may, by will, entirely disinherit a child (131-56, 154+741, L. R. A. 1916D, 421). Descent and Distribution, ¶47(1); Wills, ¶1.

Homestead entryman on public lands, who is entitled to a patent by having commuted and made final proof and payment is the equitable owner of the land, and same descends according to state law (122-1, 141+851). Descent and Distribution, ¶8; Public Lands, ¶35(4, 5).

7237. Homestead—

Acceptance of testamentary provisions as precluding claim to proceeds of homestead (122-113, 142+16). Homestead, ¶136.

The surviving spouse, who has consented to her husband's will, cannot withdraw her consent after his death, and elect to take under the statute, unless the consent was procured by the husband by concealment from the wife of his true financial condition (129-442, 152+845, L. R. A. 1915E, 815). Wills, ¶796.

The right of the surviving spouse vests at the death of the decedent, and is not dependent on a setting apart of the homestead under §§ 7307 and 7308, and, in the absence of a setting apart, the surviving spouse, and not the administrator, is entitled to possession (130-462, 153+876). Homestead, ¶140.

The fee vests in the children, subject to the life estate of the surviving husband, and the husband cannot waive, burden, or impair their remainder interest, by any acts as life tenant or as administrator (130-462, 153+876). Homestead, ¶142(2).

Where the surviving husband is tenant for life of the homestead of the deceased spouse, and also administrator of her estate, he cannot charge the estate with taxes paid or improvements made (130-462, 153+876). Executors and Administrators, ¶110.

7238. Lands other than homestead—The surviving spouse shall also inherit an undivided one-third of all other lands of which decedent at any time during coverture was seized or possessed, to the disposition whereof, by will or otherwise, such survivor shall not have consented in writing, except such as have been transferred or sold by judicial partition proceeding or appropriated to the payment of decedent's debts by either execution or judicial sale, by general assignment for the benefit of creditors, or by insolvency or bankruptcy proceedings, and subject to all judgment liens. But the land so inherited shall be subject in their just proportion to such debts of the decedent as are not paid out of his personal estate. The residue of such other lands, or, if there be no surviving spouse, then the whole thereof, shall descend, subject to the debts of the intestate, in the manner following:

First—in equal shares to his surviving children, and to the lawful issue of his deceased children, by right of representation.

Second—if there is no surviving child and no lawful issue of any deceased child, and the intestate leaves a surviving spouse, then the whole estate shall descend to such spouse.

Third—if the intestate leaves no issue nor spouse, his estate shall descend to his father and mother in equal shares, or, if but one survives, then to such survivor.

Fourth—if there be no surviving issue nor spouse, nor father nor mother, his estate shall descend in equal shares to his brothers and sisters, and to the lawful issue of any deceased brother or sister, by right or [of] representation.

Fifth—if the intestate leaves neither issue, spouse, father, mother, brother nor sister his estate shall descend to his next kin in equal degree, except that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor more remote.

Sixth—if any person dies leaving several children, or leaving one child and the issue of one or more other children, any such surviving child dies under age and not having been married, all the estate that came to the deceased child by inheritance from such deceased parent shall descend in equal share to the other children of the same parent, and to the issue of any such other children who have died, by right of representation.

Seventh—if, at the death of such child, who dies under age and not having been married, all the other children of his said parent being also dead, and any of them having left issue, the estate that came to such child by inheritance from his said parent shall descend to all the issue of the other children of the same parent, according to the right of representation.

Eighth—if the intestate leaves no spouse nor kindred, his estate shall escheat to the state. (Amended '17 c. 272 § 1)

In general—The surviving spouse and next of kin, as designated in § 8175, come within the designation of heirs at law as used in this section (125-357, 147+278). Death, ¶32.

Administrator taking possession of land of the estate is chargeable with the rents and profits received therefrom, and if the amount thereof cannot be determined he is chargeable with the rental value thereof (130-462, 153+876). Executors and Administrators, ¶477.

The right of a surviving spouse under this section is not affected by § 7242 (122-190, 142+129). Descent and Distribution, ¶53.

Where a decedent leaves neither issue, spouse, father, mother, brother, or sister, but leaves issue of deceased brothers and sisters, his property descends to them per stirpes, and not per capita, under this section as it now stands, giving effect to the change in the law made by R. L. 1905 (135-145, 160+253). Descent and Distribution, ¶43.

Wife's interest in husband's realty—A vendee in a contract of sale of lands, who pays part of the price together with taxes and assessments, and enters into possession and makes improvements, has an equitable title to which his wife's statutory marital right attaches, though the contract provides that the vendor may convey to the vendee's assignees. In such case the wife, in order to maintain an action at law against the vendor to recover damages on the ground that he had conspired with the husband to cancel the contract, must show that the land has passed into the hands of an innocent purchaser (123-483, 144+222). Husband and Wife, ¶6(2, 3).

Where husband, without joinder of wife, entered into agreement for purchase of land, the wife could not resist a reformation of the contract on the ground that such reformation would affect her inchoate interest in the property (129-217, 152+268). Husband and Wife, ¶212.

Husband's interest in wife's realty—Upon the death of a wife possessing a vested estate in remainder, which accrued upon the death of the testator, her estate passes to her husband (126-247, 148+112). Descent and Distribution, ¶17.

An instrument held a lease and not a conditional sale of ore in place, so that the surviving husband of the lessor was entitled to one-third of the royalties under this section (122-190, 142+129). Mines and Minerals, ¶56.

Election—The surviving spouse of a nonresident testator may renounce, though she also is a nonresident. (122-190, 142+129). Wills, ¶779.

Withdrawal of consent to will—Consent given by the surviving spouse cannot be withdrawn, and an election made to take under the statute, unless for legal grounds, such as a failure of decedent to make a fair disclosure of his property is invalid. (129-442, 152+845, L. R. A. 1915E, 815). Wills, ¶796.

[7238—]1. **Dower and curtesy, etc., in lands conveyed by spouse, etc., prior to January 1, 1902, abolished**—All inchoate estates in dower and curtesy, and all inchoate estates or statutory interests in lieu of dower and curtesy, are hereby abolished in all lands in this state which have been conveyed prior to January 1, 1902, by the husband or wife of the one entitled to such inchoate dower or curtesy, or statutory interest, by a conveyance in writing. ('17 c. 450 § 1)

[7238—]2. **Same—Limitation of actions**—No action for the recovery of real property, or of any right therein, or the possession thereof, shall be maintained by any person having any estate in dower or by the curtesy or any estate or statutory interest in lieu of dower or by the curtesy therein, or by anyone claiming, by, through or under any such person, where it appears that the husband and wife of such person conveyed such real property, or any interest therein, by a conveyance in writing, prior to the first day of January, 1902; and no action shall be maintained for the recovery of real property, or of any right therein, or the possession thereof, by any person claiming as heir of any person who has conveyed land claimed as a homestead at the time of the conveyance and where such conveyance was made prior to January 1st, 1902, unless such action shall be commenced on or prior to the first day of December, 1917, and notice thereof filed for record at the time of the commencement of said action in the office of the register of deeds in the county where said real property is situate. ('17 c. 450 § 2)

7239. Election—Interpretation—Devise not additional—

In general—This section applies by its terms only to cases where the will of a deceased parent makes provision for a surviving spouse in lieu of the rights in his or her estate secured by statute, and not to a case where testator has no lineal descendants (135-357, 160+1016, L. R. A. 1917C, 504). Wills, ¶800.

A contract by a widow, by which she waived her statutory rights in testator's estate, held fair and binding (161+395). Wills, ¶740(2, 3, 4).

Withdrawal of consent to will—A surviving spouse cannot withdraw consent to decedent's will and elect to take under the statute, in absence of legal grounds for such withdrawal, such as a failure of decedent to make a fair disclosure of his property at the time the consent was given. A husband held to have failed to make a fair disclosure to his wife as to his property at the time she consented to his will, so that she was entitled to withdraw such consent and elect to take under the statute (129-442, 152+845, L. R. A. 1915E, 815). Wills, ¶796.

Nonresident spouse—The nonresident surviving spouse of a nonresident testator may renounce under this statute (122-190, 142+129). Wills, ¶779.

Renunciation by nonresident surviving spouse of nonresident testator is binding in this state and elsewhere (122-190, 142+129). Wills, ¶801.

The renunciation by a nonresident spouse of a nonresident testator must be made in this state, irrespective of the law of the domicile of the parties (122-190, 142+129). Descent and Distribution, ¶4.

Though a widow named in a will affecting land in this state is not required to elect under this section, because testator left no lineal descendants, she may be prevented by common-law estoppel, from taking under the will, where she has made an election to take under the will in Iowa, under the laws of that state (135-357, 160+1016, L. R. A. 1917C, 504). Wills, ¶800.

7240. Illegitimate child—

The declaration of paternity must be made by the real father of the child. A "competent attesting witness" under this section is a competent witness, who, at the request of the person making the writing containing the declaration of legitimacy, subscribes the same as such witness (130-256, 153+324; 130-256, 153+593). Bastards, ¶13.

7242. Degrees, how computed—

This section does not affect the rights of the surviving spouse under § 7238 (122-190, 142+129). Descent and Distribution, ¶53.

A husband may transfer his personal property as a gift under such circumstances as to constitute a fraud upon the marital rights of his wife. Findings that gifts by a husband,

directly and through a trustee, to children by former marriages, were not fraudulently made, held supported by the evidence (125-190, 145+1067). Husband and Wife, ¶6(3).

7243. Personal Estate—Distribution—When any person dies owning personal property, or any interest therein, the same shall be disposed of and distributed as follows:

1. The widow shall be allowed the wearing apparel of her deceased husband, his household furniture not exceeding five hundred dollars in value, and other personal property not exceeding the same amount, both to be selected by her; and she shall receive such allowances when she takes the provisions made for her by her husband's will as well as when he dies intestate.

2. In case there is no surviving spouse, then the minor children, if any, shall receive the same allowances, to be selected by their guardian.

3. The widow or children, or both, constituting the family of the decedent, shall have such reasonable allowance out of his personal estate as the probate court deems necessary for their maintenance during the settlement of the estate, according to their circumstances, which in case of an insolvent estate shall not be longer than one year after administration is granted, nor, in any case, after the distributive share of the widow in the residue of the personal estate has been assigned to her.

4. If from the inventory of an intestate estate it appears that the value of the whole estate does not exceed the sum of one hundred and fifty dollars in addition to the allowances made for the widow and children, the court, after the payment of the funeral charges and expenses of administration, shall assign for the use and support of the widow or the children, or both, constituting the family of the decedent, the whole of said estate.

5. If the personal estate amounts to more than the allowances mentioned in this section, the excess thereof, after the payment of the funeral charges and expenses of administration, shall be applied to the payment of the decedent's debts.

6. The residue, if any, of the personal estate shall be distributed as follows: one-third thereof to the surviving spouse if any free from any testamentary disposition thereof to which survivor shall not have consented in writing; the remainder of such residue, or, if there be no surviving spouse, then the whole thereof, except as otherwise disposed of by will, shall be distributed in the same proportions to the same persons and for the same purposes as prescribed for descent of real estate by Section 7238 subds. 1-6.

7. All the provisions of this Section shall apply as well to a surviving husband as to a surviving wife. (Amended '15 c. 350 § 1)

"An act to amend section 7243, General Statutes Minnesota for 1913, relating to descent of personal estate and distribution," approved April 24, 1915. This amended section appears to supersede the amendment made by 1915 c. 331, "An act to amend subdivision 3 of section 7243," etc., approved April 24, 1915.

In general—The surviving spouse and next of kin, as designated in § 8175, come within the designation of heirs at law, as used in this section (125-317, 147+278). Death, ¶32.

A surviving spouse cannot withdraw consent to the will of decedent, and elect to take under the statute, unless there exist legal grounds for such withdrawal, such as a failure by decedent to make a fair disclosure of his property at the time the consent was given (129-442, 152+845, L. R. A. 1915E, 815). Wills, ¶796.

Subd. 1—The widow is entitled to the \$500, though she assented to her husband's will at the time of its execution, though such will provided that the provision for the wife was "in lieu of any provisions made for her by the laws or statutes of the state" (127-223, 149+303). Wills, ¶800.

The right of the surviving spouse to select personal property, if not exercised in his lifetime, may be exercised by his administrator (130-462, 153+876). Executors and Administrators, ¶191.

When a widow dies prior to an allowance under this section, the right of selection survives to her personal representative (132-409, 157+648). Executors and Administrators, ¶191.

7244. [Superseded.]

See §§ [7244—]1, [7244—]2.

[7244—]1. Property escheated—Determination of heirship—When any person who has died within the last past fifteen years in the State of Minnesota, or shall hereafter die being a resident of the State of Minnesota at the time of his death or owning property in said state, and his estate having been duly administered upon in the probate court of the county having jurisdiction

thereof, and leaving no known spouse or kindred, and said estate having been fully administered upon, and the balance in the hands of the representative of said estate having by order of said court escheated to, and been paid to the State of Minnesota, and if it shall be made to appear that said deceased person, in fact, left heir or heirs to his estate, then, upon the proper presentation of proofs of such heirship and amount so escheated to the district court of the county wherein such probate proceedings were had, either in term time or vacation, upon notice of at least twenty days to the attorney general in said state of the time and place of hearing such proofs, and if upon such hearing the said district court shall find that such deceased person left heir or heirs, said court shall determine who such heir or heirs are and the amount so escheated, and file its decision to that effect and a certified copy of said decision shall be forthwith filed with the state auditor. ('17 c. 72 § 1)

[7244—]2. **Same—Refundment and transfer to heirs, etc.**—When the said court has filed its decision in an escheated estate as aforesaid, and it was determined in said decision that certain heir or heirs are entitled to money or property heretofore escheated to the State of Minnesota, it shall be the duty of the state auditor of the state to recommend an appropriation, in writing, by the state legislature, if in session, or, if not in session, then to the next legislature for the repayment or the reimbursement of said money, or the transfer of said property to such heir or heirs, or to his or their attorney in fact, upon the recording of his power of attorney in the office of the state auditor, and the state auditor shall draw his warrant on the state treasurer of said state for the payment of the amount so escheated, if in money; and if in property the state auditor under his seal shall duly execute a proper transfer thereof. ('17 c. 72 § 2)

7249. Government homestead patented to "heirs"—

After final proof and payment on commutation under homestead laws, but before patent issues, the land descends according to the state laws (122-1, 141+851). Descent and Distribution, §8; Executors and Administrators, §39; Public Lands, §35(4, 5).

[7249—]1. **Persons guilty of felonious homicide not to inherit, etc.—Insurance companies—Procedure of insurance companies**—No person who feloniously takes or causes or procures another so to take the life of another shall inherit from such person or receive any interest in the estate of the decedent as surviving spouse, or take by devise or legacy from him and [any] portion of his estate, and no beneficiary of any policy of insurance, or certificate of membership issued by any benevolent association or organization, payable upon the death or disability of any person, who in like manner takes or causes or procures to be taken the life upon which such policy or certificate is issued, or who causes or procures a disability of such person, shall take the proceeds of such policy or certificate; but in every instance mentioned in this act, all benefits that would accrue to any such person upon the death or disability of the person whose life is thus taken or who is thus disabled, shall become subject to distribution among the other heirs of such deceased person according to the law of descent and distribution in this state, in case of death, and in case of disability the benefits thereunder shall be paid to the disabled person.

Provided, however, that an insurance company shall be discharged of all liability under a policy issued by it upon payment of the proceeds in accordance with the terms thereof, unless before such payment the company shall have knowledge that such beneficiary has taken or procured to be taken the life upon which such policy or certificate is issued, or that such beneficiary has caused or procured a disability of the person upon whose life such policy or certificate is issued. ('17 c. 353 § 1)

WILLS—EXECUTION, EFFECT, ETC.

7250. Who may make a will—How executed—

Cited (122-190, 142+129).

Undue influence (see 130-92, 153+131).

Will as distinguished from a deed—Deed or will (see 130-320, 153+604). Wills, § 88(1), 90.

A trust deed held not testamentary in character (125-190, 145+1067). Wills, § 88(1).

A deed delivered by the grantor to a third person, with instructions to deliver same to the grantee on the death of the grantor held not testamentary in character (124-346, 145+112). Wills, § 88(1).

In a suit to set aside a deed of two lots to defendant as void, evidence held not to show any basis for contention that the deed was an attempted testamentary disposition of the property (162+527). Wills, § 93.

Testamentary capacity—An adjudication of insanity creates a presumption of testamentary incapacity, but such presumption is not conclusive, and may be rebutted by showing that the derangement is not general, and has no reference to the subject-matter of the will (130-92, 153+131). Wills, § 52(4).

Evidence held to show mental capacity, and insufficient to show undue influence (132-379, 157+505). Wills, § 52(1), 166(1).

Evidence held to support a finding of testamentary capacity and that the will was not the result of undue influence (131-439, 155+392). Wills, § 55(7), 166(1).

Evidence held to show want of testamentary capacity (128-259, 143+726). Wills, § 55(5).

Evidence held to support a verdict finding that testatrix was mentally competent to make a will, and that the will was not procured by undue influence (128-277, 150+914). Wills, § 55(5), 166(1, 8).

A testator must understand the nature and situation of his property, and the claims of others on his bounty or his remembrance, and he must be able to hold these things in his mind long enough to form a rational judgment concerning them. A person who is unable to understand, without being prompted, the nature and importance of the business he is transacting, has not capacity to make a will (129-248, 152+541). Wills, § 50, 55(9).

An instruction in a will contest held not erroneous because it failed to draw a distinction between mental capacity and positive insanity (126-275, 148+117). Wills, § 329(1, 2).

Evidence as to mental capacity of a testator held to support a verdict in favor of proponent, so that a motion for new trial was properly denied (126-275, 148+117). Wills, § 400.

Where the judgment in proceedings for the appointment of a guardian of an incompetent, instituted after the will is executed, does not find the testator incompetent at a time prior to the rendition of such judgment, it is competent evidence in proceedings for the probate of the will, and its probative value is largely for the determination of the trial court. The fact that the application was not for the purpose of declaring testatrix insane, but merely for the purpose of determining her inability to manage her affairs, did not render the adjudication inadmissible. The petition on such application is not admissible as an admission against interest by the petitioner, who was named as a devisee in the will (124-27, 144+412, Ann. Cas. 1915B, 1006). Wills, § 53(3).

Witnesses—Evidence held to sustain a special verdict to the effect that a will was signed by testator in the presence of two persons, who duly attested the same and subscribed their names as witnesses (161+261). Wills, § 302(1).

7253. Wills made out of the state—

Cited (122-190, 142+129).

7256. Written wills, how revoked or canceled—

Where testator devised a farm to a son, and made him a residuary legatee, and bequeathed certain sums of money to two daughters, "said sums of money to be paid by my son," a subsequent conveyance of the farm by the testator to the son, and other conveyances to the daughters of land specifically devised to them, did not revoke the specific legacies of money to the daughters, and such legacies were properly deducted from the son's share of the residue (135-377, 160+1025). Wills, § 194, 822.

7258. Duty of custodian of will—

The person named in a will as executor is under no obligation to secure the probate of the will, and where he secures allowance of the will in the probate court, but is ultimately unsuccessful on a contest for want of testamentary capacity, he is not entitled to payment out of the fund for his services and expenses in resisting the contest (133-278, 158+395). Executors and Administrators, § 488.

7259. After-born child—If any child of a testator, born after the death of such testator, has no provision made for him by his father in his will or otherwise, he shall take the same share of his father's estate that he would have

taken if the father had died intestate unless it appears that such omission was intentional. (Amended '15 c. 343 § 1)

Section 2 repeals inconsistent acts, etc.

125-40, 145+623, 51 L. R. A. (N. S.) 645; notes under § 7260.

7260. Child not provided for in will—

Under this section parol testimony is admissible to show that the omission of the child was intentional. The burden is upon those claiming that the omission was intentional to prove such fact (125-40, 145+623, 51 L. R. A. [N. S.] 645). Descent and Distribution, ¶47(2).

The rights given by this section to a pretermitted child must be enforced in the probate court, and if not so enforced are barred by the final decree of that court (131-56, 154+741, L. R. A. 1916D, 421). Descent and Distribution, ¶89.

PROBATE OF WILLS

7266. Who may petition for—

The law does not require the person named in a will as executor to secure the probate of the will, and he is not entitled to payment out of the fund for his services and expenses in unsuccessfully resisting a contest of the will on the ground of testamentary incapacity (133-278, 158+395). Executors and Administrators, ¶488.

7268. Filing petition—Notice—Proof and allowance of will—

Cited and applied (132-379, 157+505).

7271. Proof required in case of contest—

129-460, 152+872.

Cited (123-259, 143+726).

Where the will is contested, neither party is limited to the testimony of the subscribing witnesses, and either party may present other evidence. Evidence, on a will contest, held to support an order admitting the will to probate (128-17, 150+213, L. R. A. 1916C, 1214, Ann. Cas. 1916D, 1101). Wills, ¶303(6).

Where proponent called and examined a subscribing witness, failure to ask him in regard to the sanity of testator did not defeat the will, it being contestant's duty, if he desired his testimony as to matters omitted, to examine him in respect thereto (128-17, 150+213, L. R. A. 1916C, 1214, Ann. Cas. 1916D, 1101). Wills, ¶303(4).

When contestant makes out a prima facie case of undue influence, the burden is then cast on the proponent to show that the instrument is the will of testator. The prima facie case of contestant may consist of evidence of inequality, accompanied by evidence of motive and opportunity on the part of the person preferred, and some evidence that he did in fact exert influence (122-463, 142+729). Wills, ¶163(1).

7273. When subsequent will is presented—

129-460, 152+872.

FOREIGN WILLS

7274. Wills proved elsewhere—

Election by surviving spouse, see notes under §§ 7238, 7239.

7275. Filing—Petition—Notice—

Election by surviving spouse, see notes under §§ 7238, 7239.

7276. Hearing proofs of probate of foreign will—

Election by surviving spouse, see notes under §§ 7238, 7239.

7277. Letters testamentary, etc., to be granted—

Election by surviving spouse, see notes under §§ 7238, 7239.

7278. Ancillary administration—

This section is not a statute of devolution, but, construed with the general statutes of descent and distribution, merely places foreign wills on the same plane with domestic wills (122-190, 142+129). Wills, ¶436.

LOST OR DESTROYED WILLS

7280. Will must have been in existence—No such will shall be established unless the same is proved to have been in existence at the time of the testator's death, or to have been fraudulently destroyed in his lifetime, nor unless its provisions are clearly and distinctly proved by clear and satisfactory evidence. (Amended '17 c. 334 § 1)

GRANTING LETTERS OF ADMINISTRATION

7287. Who entitled to administration—Administration of the estate of a person dying intestate shall be granted to one or more of the persons hereinafter mentioned, and in the following order:

1. The surviving spouse or next of kin or both, as the court may determine, or some person selected by them or either of them, provided that in any case the person appointed shall be suitable and competent to discharge the trust.

2. If all such persons are incompetent or unsuitable, or refuse to accept, or if the surviving spouse or next of kin, for thirty days after the death of the intestate, neglect to apply for administration, the same may be granted to one or more of the principal creditors, if any such are competent and willing to take it, or to some other person who may be interested in the administration of the estate. If the decedent was a native of any foreign country and the surviving spouse and next of kin neglect for thirty days after his death to apply for administration, the same may be granted to the consul or other representative of the country of which the decedent was a native, residing in this state, who has filed a copy of his appointment with the secretary of state, or to such person as he may select, if suitable and competent to discharge the trust. But the court in any case arising under this subdivision shall have the discretion to appoint one or more creditors, or other person interested, or to appoint any suitable or competent person interested in the estate by purchase or otherwise.

3. If the person so appointed neglects for thirty days, after written notice of such appointment, under the seal of the probate court, served personally or by mail, to file the oath and bond required by law and the court, such neglect shall be deemed a refusal to serve, and the court may appoint such other person or persons as are next entitled to administer such estate. Such person may be appointed without notice. (Amended '17 c. 513 § 1)

Cited (129-279, 152+413).

Letters of administration issued to a person not entitled thereto are voidable and may be revoked, but are not void ab initio, and are effective to the extent necessary to protect those in good faith acting in reliance upon them (162+454). Executors and Administrators, ¶29(1).

7288. Petition, what it must show—

A defective petition may render the proceedings voidable, but not void, and jurisdiction may attach notwithstanding a defective petition. So held in the case of one appointed administrator of the estate of his deceased wife, to whom he was married while he had another wife living from whom he had not been lawfully divorced; such facts not appearing by the record in the probate proceedings (162+454). Executors and Administrators, ¶29(1).

7289. Hearing—Contest—Granting letters—

Letters of administration not subject to collateral attack for mere irregularities (122-1, 141+851). Executors and Administrators, ¶29(2).

7292. Administrator de bonis non—

An administrator de bonis non has power to maintain an action on the bond of his predecessor to recover a fund recovered in an action maintained by the predecessor for the wrongful death of the intestate (123-165, 143+255). Executors and Administrators, ¶537(6).

7293. Special administrator—

An order appointing a special administrator is not appealable (129-279, 152+413).

In view of § 7227, the appointment of a special administrator without a petition therefor is a nullity (128-112, 150+385). Executors and Administrators, ¶22, 29.

[7295—]1. **Special administrator in certain small estates**—Whenever it shall be made to appear satisfactorily to the judge of any probate court that the personal property of an intestate deceased person over the administration of whose estate said judge of probate would be entitled to jurisdiction under existing laws, consists only of such property as by existing law would be exempt from application towards the payment of debts and does not exceed in value six hundred and fifty dollars (\$650.00) such judge may appoint a special administrator, with or without notice, who shall proceed to speedily administer said estate according to the provisions of this chapter. Before en-

tering upon his duties such special administrator shall file in the court appointing him his bond with sufficient sureties in such sum as the court may order and his oath to faithfully and lawfully administer said estate according to law. ('17 c. 251 § 1)

See §§ [7403—]1 to [7403—]4.

[7295—]2. **Same—Inventory, account, etc.**—Within fourteen days following the issuance of letters to such special administrator he shall file in the probate court a duly verified inventory of the property belonging to the estate of the decedent and a statement of the liabilities of said estate so far as known, together with an appraisal by two disinterested parties, who shall be appointed by the court, of the property belonging to said estate. If from such inventory and appraisal and any further evidence before court it appears that the estate of the deceased does not exceed in valuation the amount of claims for funeral bills and last sickness, taxes, expenses of administration and statutory allowance to surviving spouse and family of deceased and any other property exempt by law from application towards the payment of debts said special administrator shall immediately file his final account of the administration of said estate. ('17 c. 251 § 2)

[7295—]3. **Same—Notice of hearing**—Upon the filing of such account the court may require personal service of notice of hearing of said account on all heirs at law and persons interested in said estate. ('17 c. 251 § 3)

[7295—]4. **Same—Order allowing account**—Upon the hearing of said account if it shall satisfactorily appear to the court that the estate of the deceased does not exceed in valuation the amount of claims for last sickness and funeral bills, taxes, expenses of administration, allowance to surviving spouse and family of deceased and any other property exempted by law from application towards the payment of debts of deceased the court shall enter its order adjusting and allowing said account as adjusted. ('17 c. 251 § 4)

[7295—]5. **Same—Administrator when to be discharged**—Upon the filing in such court of vouchers for all disbursements subject to payment paid by said special administrator, the court shall enter its order discharging such special administrator and the sureties on his bond from further liability. Provided, however, that where there is a claim for the alleged wrongful death of the decedent no such special administrator or the sureties on his bond shall be discharged until he shall have filed in the probate court a certified copy of the order of the district court approving such settlement as may be made of such wrongful death claim, and also a certified copy of the order of the district court distributing the moneys received for wrongful death to the persons thereunto entitled. ('17 c. 251 § 5)

REPRESENTATIVES—GENERAL PROVISIONS

7296. General powers and duties—

Executor may sue to recover proceeds of land condemned (121-233, 141+170). Eminent Domain, ¶156; Executors and Administrators, ¶130(1).

Under this section the personal representative of a decedent can maintain an action to set aside decedent's contract for the sale of real property upon the ground of mental incompetency (162+1070). Executors and Administrators, ¶129(1).

An administrator held entitled to sue for the purchase price of land, though the sole heir of decedent conveyed the premises to defendant and received the consideration (126-303, 144+223; 126-303, 148+288). Executors and Administrators, ¶40.

7297. Liability—Collection of debts, etc.—

Evidence held insufficient to justify the conclusion that an administrator was at fault in the loss of property of the estate, and that an order charging his account with the value thereof was error (133-421, 158+703). Executors and Administrators, ¶506(3).

7298. Allowances to executors, etc.—

The probate court may determine the amount that each of two or more executors shall receive, and when that court allows a lump sum the district court may apportion the same among the executors according to their respective services to the estate (161+497). Executors and Administrators, ¶498.

SETTING ASIDE HOMESTEAD, ETC.

7307. Petition—

Heirs may waive homestead right under the federal public land laws, and permit sale to pay debts (122-1, 141+851). Public Lands, [§35\(4, 5\)](#).

As the right of the surviving spouse in the homestead vests at the death of the departed spouse, the statutory provisions for setting it apart merely prescribe a remedy, and the administrator is not entitled to the possession of the homestead because it has not been set apart under the statute (130-462, 153+876). Homestead, [§140](#).

COLLECTION OF ASSETS

7312. Disposition of real estate so purchased—Title of foreign representative to all real estate—Any real estate purchased by an executor or administrator as such at a foreclosure sale, or sale on execution for the recovery of a debt due the estate, shall be held, reported, and may be sold and conveyed as the personal estate of the decedent; and if not so sold it shall be assigned and distributed to the same persons and in the same proportions as if it had been part of the personal estate of the decedent, but the legal title of all real estate so acquired, or in any other manner whatever acquired, by a foreign executor, administrator or guardian, shall vest in such executor, administrator or guardian, who shall represent the interest of all parties concerned, and shall have full power of disposition over such real estate. (Amended '15 c. 40 § 1)

CLAIMS AGAINST ESTATES

7320. Order limiting time to present claims—

Liability of heirs inheriting homestead, constituting only property of the estate, under § 8182 et seq., without presentation of claim to probate court, and without order limiting time for presentation of claims (see 161+413). Descent and Distribution, [§140](#). See, also, note under § 8182, post.

7322. Extension of time for cause—

Where a claim of apparent merit is filed out of time, the supreme court will not interfere with the discretion of the probate court in permitting it to be filed, unless such discretion is clearly abused (123-57, 142+945). Executors and Administrators, [§225\(2\)](#), 233.

Applications to file claims after the time limited is addressed to the sound discretion of the probate court. The claimant must show good cause why he did not file his claim in time, and he must proceed with diligence after discovery of default. A delay of eight months after instructions to an attorney to present the claim, seven months after the attorney was advised of the default, six months after the time did expire, four months after the attorney was reminded of the default, and until hearing on the final accounting, is such laches that there was no abuse of discretion in denying an application to receive the claim (183-172, 157+1075). Executors and Administrators, [§225\(8\)](#), 233.

7323. Claims, how presented or barred—

Evidence on wife's claim against husband's estate for balance due on household necessities paid for by her held to sustain a conclusion that she was entitled to recover (162+1060). Executors and Administrators, [§221\(6\)](#).

Under 1899, c. 265, claims theretofore paid by the administrator without having been allowed by the probate court may be credited to him in his final account upon proof that such claims were just and existing demands (130-462, 153+876). Executors and Administrators, [§481](#).

7327. Order adjudicating claim—Effect—Interest—

A decree of the United States circuit court, allowing a claim against the estate of a decedent, and ordering its payment was conclusive as against the executors, and an order of the probate court was not necessary to warrant its payment (125-368, 147+246). Judgment, [§820\(3\)](#).

PAYMENT OF DEBTS AND LEGACIES

7336. Real estate may be sold, when—

Heirs of deceased homesteader on government land may waive exemption rights, and permit sale to pay debts (122-1, 141+851). Public Lands, [§35\(4, 5\)](#).

A government homestead after final proof and payment, but before issuance of patent, may be sold by order of the probate court, and such sale is not open to collateral attack on the ground that the order was improperly granted (122-1, 141+851). Executors and Administrators, [§383](#); Public Lands, [§140](#).

[7343—]1. Claim of state against estates of certain insane persons— Whenever any patient in a state institution for the insane dies and does not leave surviving him spouse, children, grandchildren or parents, then and in such case the state shall have a claim for maintenance, treatment and support against the estate of such deceased person, which claim shall be computed at the rate of one hundred twenty dollars per year for the time such person was in such institution and be verified by the superintendent of the institution wherein such deceased person was confined. Provided, however, that the estate of such deceased insane person shall be entitled to a credit upon such claim of any sum or sums of money that may have been paid to the state for his or her maintenance, treatment or support in such institution. ('17 c. 409 § 1)

Section 2 repeals inconsistent acts, etc.

DISPOSAL OF REALTY BY REPRESENTATIVES

7344. Real estate may be sold, when—

Propriety of sale not open to question in collateral proceeding (122-1, 141+851). Executors and Administrators, §=383.

7354. Bond and oath before sale—

The special or sale bond required by this section is additional or cumulative security, and not a substitute for the general bond provided for by § 7416 (135-346, 160+859). Guardian and Ward, §=92.

7358. Husband or wife must join, when—Guardian of insane spouse—The homestead of a ward having a spouse shall not be sold or mortgaged by his guardian unless such spouse shall join in the deed or mortgage, nor shall the sale or mortgage of any land of a ward by his guardian in any manner affect the interests or estate of such spouse therein, unless he or she shall join in the conveyance; provided, that if the spouse of such ward has been adjudged insane or incompetent to transact his or her business, or manage his or her estate, it shall not be necessary for such insane or incompetent spouse to join in such conveyance, but a guardian of such insane or incompetent spouse shall first be appointed by the probate court of the proper county, and such guardian shall join in such conveyance after first being authorized so to do by order of such probate court. (Amended '15 c. 258 § 1)

7369. Sale not to be avoided, when—

Propriety of order of sale cannot be questioned by heirs in collateral proceeding (122-1, 141+851). Executors and Administrators, §=383.

[7375—]1. Certain executor's deeds legalized—All deeds of land in this state heretofore and between the 20th day of August, 1910, and the 30th day of September, 1910, made, executed, acknowledged and delivered by an executor or executors under a power of sale in a will, which were signed and acknowledged by such executor or executors personally and not as such executor or executors, but which deeds contained in the body thereof recitals that the same were made by such vendor or vendors as executor or executors of an estate therein-named, and such deeds were in all other respects duly and properly drawn, executed and acknowledged, and afterwards duly recorded in the office of the register of deeds of the proper county, are with the records thereof in all things hereby legalized, and shall have the same effect as if they were in all things drawn, executed, acknowledged, delivered and recorded according to law, provided that this act shall not extend to nor apply to any action or proceeding now pending. ('17 c. 423 § 1)

[7375—]2. Certain decrees for conveyance of land under contract legalized—That any decree for conveyance of real estate under contract, by an administrator or executor, made by any probate court of this state, in the matter of the estate of a decedent, when the order for hearing the petition for such decree was published the requisite number of times in a legal and proper newspaper, but the date of such hearing was fixed in said order and the hearing held on a date less than three weeks from the first publication

of such order, and such decree issued; and which decree or a certified copy thereof, has been of record in the office of the register of deeds of the county where the real estate thereby affected was at the time of making such record, or is situate, for a period of not less than ten years prior to the passage of this act, be and the same hereby is legalized and made valid, and given the same force and effect as if proper notice had been given and such hearing had been held at the proper time. ('17 c. 457 § 1)

[7375—]3. **Same—Pending actions—**That nothing herein contained shall be construed to apply to any action or proceeding in which the validity of such decree is involved. ('17 c. 457 § 2)

[7376—]1. **Court may decree conveyance, when—**When any person under contract, in writing, to convey any real estate, dies or becomes insane, or incompetent before making the conveyance, the probate court may direct the representative or guardian, or the guardian of any minor who may take the vendor's interest in such real estate or any part thereof by descent or devise from such decedent, to convey such real estate to the person entitled thereto in all cases where such decedent, if living, or such ward, if sane or competent, might be compelled to convey. (Amended '15 c. 223 § 1)

ACCOUNTING—DISTRIBUTION—FINAL SETTLEMENT

7383. Account to be rendered, when—

An administrator, receiving money belonging to an estate, must account therefor, though he could not have collected it in a suit at law, there being no asserted adverse claim thereto (126-321, 148+282). Executors and Administrators, ¶465.

7390. Proceedings on hearing—

The probate court has no jurisdiction to determine a controversy between a devisee and one who claims to have succeeded to his rights in the estate, and the district court on appeal has no greater jurisdiction (161+392). Courts, ¶202(5).

A surety on an administrator's bond may be heard in the probate court on an application to correct or set aside the final settlement, and hence the settlement cannot be attacked by the surety in an action on the bond on the ground that the probate court was mistaken in the facts on which its order was based or on the ground that the order was erroneous as a matter of law (126-445, 148+302). Executors and Administrators, ¶509(3).

7391. Assignment of residue and record thereof—

A decree of distribution of a testate estate necessarily construes the will, and unless made subject to the will, or unless ambiguous or uncertain on its face, the will may not be resorted to for the purpose of modifying or affecting the decree; but where the decree unequivocally assigns the whole estate to one person, it is not rendered uncertain by a recital that the distribution is in accordance with the terms of the will (132-316, 156+349). Executors and Administrators, ¶315(5, 6).

7393. Opening decree of distribution made without notice—

A decree of distribution, though erroneous, is binding and conclusive, and can be set aside by a court of equity only for fraud or mistake of fact (132-176, 156+285). Executors and Administrators, ¶315(4, 6); Judgment, ¶435.

The probate court has no power to amend its decree after the time for appeal has expired, unless in case of fraud, mistake, or surprise (132-176, 156+285). Executors and Administrators, ¶315(3).

7400. Discharge of representative—

An administrator cannot obtain an order in the probate court discharging him and his sureties until it appears that he has faithfully and fully administered his trust (123-165, 143+255). Executors and Administrators, ¶537(6).

A complaint by heirs against an administrator to recover the value of land lost by defendant's failure to pay taxes thereon held demurrable, where it showed an unassailable discharge of the administrator by the probate court (128-3, 150+171). Executors and Administrators, ¶443(1).

[7403—]1. **Distribution of certain small estates—**Whenever any person dies leaving real or personal property within this state and all of the property and assets of said deceased are exempt from the payment of debts, and do not exceed in value six hundred and fifty dollars, any person entitled to apply for letters of administration or for the allowance of a will to probate may petition the probate court of the proper county that the will, if the deceased died testate, be admitted to probate, or if intestate for letters of administra-

tion, and in any event that the whole estate be closed forthwith and distribution thereof made. ('17 c. 289 § 1)

See §§ [7295—]1 to [7295—]5.

[7403—]2. **Same—Petition**—Such petition shall in addition to the jurisdictional facts contain a description of all the property of said deceased, both real and personal, itemizing the same together with the facts by reason of which the same is claimed to be exempt, and the names and addresses so far as known, of the creditors, and shall pray the judgment of the probate court for a distribution of said property forthwith. ('17 c. 289 § 2)

[7403—]3. **Same—Citation**—The court shall thereupon issue its citation for a hearing thereon and cause the same to be published in the manner prescribed by law. Said citation shall contain a general description of all the property of said deceased and a true copy of said citation shall be mailed to each of the heirs and to each of the creditors of said deceased so far as the same can be ascertained, at least fourteen days prior to the date of hearing. ('17 c. 289 § 3)

[7403—]4. **Same—Decree of distribution**—If upon the date set for the hearing it shall appear to the probate court that all of the property left by said deceased is exempt, the probate court may in case there be a will admit the same to probate, and may order an order and decree distributing said property to the heirs or legatees and devisees of said deceased, and such further order providing for the payment of the expenses of administration as may be necessary in the premises. ('17 c. 289 § 4)

ADVANCEMENTS

7404. What are, how treated—

The doctrine of advancements, as regulated by this section, applies to intestate estates only (125-115, 145+785). Wills, ¶758.

PARTITION

7412. Guardians and agents—Notice—

After an action on an executor's bond is commenced, an order of the probate court, vacating its order granting leave to bring such action, is not effective (125-368, 147+246). Executors and Administrators, ¶537(2).

PROBATE BONDS

7416. Bonds, when required, conditions—

The special or sale bond required by § 7354 is additional or cumulative security, and not a substitute for the general bond provided for by this section (135-346, 160+859). Guardian and Ward, ¶92.

The sureties on an administrator's bond executed under this section are liable for an act of the principal in converting the proceeds of the settlement of an action for wrongful death of the intestate given by § 8175 (123-165, 143+255). Executors and Administrators, ¶528(1).

A surety on an administrator's bond is concluded by a judgment settling the accounts of an administrator, in the absence of fraud or collusion, and such settlement is not open to collateral attack in an action on the bond (126-445, 148+302). Executors and Administrators, ¶535.

Failure of an administratrix to pay over to her successor an amount found due from her by an order of the probate court settling her account was a breach of her bond, unless the settlement may be impeached in an action on the bond (126-445, 148+302). Executors and Administrators, ¶532.

Failure to pay an established claim constituted a breach of the executor's bond, and the decree allowing the claim was conclusive as against the surety, and the fact that the claimant applied for an order of the probate court regarding payment of the claim does not affect his right to recover on the bond (125-368, 147+246). Executors and Administrators, ¶531, 532, 537(1).

7420. Guardians and sureties discharged, when—

135-346, 160+859; note under § 7354.

7421. Bonds, run to whom—How approved and prosecuted—

Cited (162+1054).

GUARDIANS AND WARDS

7425. Appointment of guardians—Whenever it appears necessary or convenient, the probate court may appoint a guardian for either the person or estate, or both, of any minor who has no guardian appointed by will, and who is a resident of the county, or who resides without the state and has property within the county; provided, however, that notice shall first be given in such manner as the court may direct to the parents of such minor, if living, and if no parent is living, or if the whereabouts of both parents is unknown, then to the next of kin or custodian of the person of such minor; and provided further that no appointment by the probate court of a guardian of the person of a child under the age of eighteen shall be effective, if, at the time of making the same, proceedings involving the care and custody of such child are pending in a district court in this state, acting as a juvenile court. (Amended '17 c. 236 § 1)

7431. When marriage of female ward terminates guardianship—The marriage of a female ward under guardianship as a minor shall terminate such guardianship; provided that this section shall not apply to any person under guardianship on account of delinquency by order of a juvenile court. (Amended '17 c. 235 § 1)

7433. Guardian for insane or incompetent persons—

The son of an incompetent held, under the circumstances, the proper person to receive the appointment as guardian (128-324, 151+130). *Insane Persons*, ¶34.

A finding that the person for whom a guardian was asked was incompetent held sustained by the evidence (124-492, 145+378). *Insane Persons*, ¶2.

There was no abuse of discretion in selecting as guardians persons other than those suggested by the incompetent (124-492, 145+378). *Insane Persons*, ¶34.

It is not necessary, in order to confer jurisdiction, that the petition state that it is made by the county board or by relatives or friends of the incompetent. If the requisite facts exist, any defect in the petition is waived, if not taken advantage of on the trial (124-492, 145+378). *Insane Persons*, ¶33(1).

7435. Hearing—Appointment—

The statute relating to the cross-examination of the adverse party (§ 8377) has no reference to this proceeding. The proceeding is not adversary, and the method of determining the facts rests in the sound discretion of the court, controlled in a general way by the rules of ordinary judicial procedure. Evidence held to support findings of trial court (128-324, 151+130). *Insane Persons*, ¶2, 33(1).

A judgment in proceedings for the appointment of a guardian of an incompetent is admissible in evidence, but is not conclusive in a collateral litigation to prove the mental condition of the person at the time the judgment is rendered, or at any past time during which the judgment finds the person incompetent (124-27, 144+412, Ann. Cas. 1915B, 1006). *Wills*, ¶53(3).

7441. Bond and oath—

135-346, 160+859; note under § 7354.

Laches in bringing action on bond (123-13, 142+882, 47 L. R. A. [N. S.] 451). *Guardian and Ward*, ¶182(3).

7442. Guardians of minors—General powers—

135-346, 160+859; note under § 7354.

Cited on question of right of custody of children as between father and mother (see 161+525).

Father, supporting family, may sue alone for loss of services of child (129-190, 151+976, L. R. A. 1915D, 1111, Ann. Cas. 1916E, 897). *Parent and Child*, ¶7(6).

The welfare of a child five years old held to be best subserved by consigning it to the custody of its grandparents, rather than to that of its father, the mother being dead (127-387, 149+604). *Habeas Corpus*, ¶85(1).

7446. Guardian to collect debts, etc., and appear in actions—Every guardian shall settle all accounts of his ward, demand, sue for, and receive all debts, claims and causes of action due to or in favor of said ward, or, with the approval of the court, he may compound or compromise for the same and execute proper discharge and satisfaction thereof. He shall appear for and represent his ward in all legal proceedings, unless another person is appointed for that purpose. (Amended '17 c. 425 § 1)

This section was also amended by 1915 c. 110.

The proper mode of entitling an action by a guardian is "B., an Incompetent Person, by R., Her Guardian," and not "R., as Guardian, etc., Plaintiff" (123-360, 143+973). *Guardian and Ward*, ¶130.

An improvident and fraudulent settlement of a guardian of his ward's cause of action, though approved by the court, may be set aside, though the defendant was not shown to have participated in the fraud (126-194, 148+45). Guardian and Ward, ¶63.

7447. Management of estate of ward—

Laches in suing guardian for accounting (123-13, 142+882, 47 L. R. A. [N. S.] 451). Guardian and Ward, ¶182(3).

A guardian of an insane person is authorized, without first obtaining the approval of the probate court, to employ an attendant to care for the invalid wife of the ward, and where such employment is necessary, and is made in good faith, without unnecessarily burdening the ward's estate, the reasonable value of the services rendered is a valid claim against the estate of the ward after his decease (135-94, 160+187, L. R. A. 1917B, 676). Insane Persons, ¶65.

7451. Same—Hearing—Order—At the time and place fixed for the hearing, witnesses shall be sworn before testifying and the certificate of such superintendent shall be admissible in evidence on his signature alone; and if, after full investigation and hearing, the judge of probate shall find that such child is entitled to the aid herein provided, and that the allegations of the petition are true, he may make an order directing such guardian to furnish aid to such child for such time, and in such an amount, as the judge of probate shall deem necessary.

The aid so furnished shall be allowed in the guardian's annual or final accounts as a part of his lawful disbursements. (Amended '15 c. 245 § 1)

7452. Debts of ward, how paid—

Where an insane person dies before a claim for services rendered to decedent's invalid wife under employment by the guardian has been paid, and an administrator of decedent's estate is appointed by the same court in which the estate of the insane person is being administered, the claim may be presented to the administrator, without being first presented in the guardianship proceedings (135-94, 160+187, L. R. A. 1917B, 676). Insane Persons, ¶62.

7453, 7454. [Repealed.]

See § [7453—]1.

[7453—]1. Laws repealed—That Chapter 470, General Laws, Minnesota, for 1913, same being Sections 7453 and 7454, General Statutes Minnesota 1913 be and the same hereby is repealed. ('15 c. 342 § 1)

COMMITMENT OF INSANE PERSONS

7464-7489. [Repealed.]

See § [7489—]20.

7465—The probate court has no jurisdiction to inquire into the mental condition of a person not actually within the territorial limits of the county, whether a legal resident of the county or not (135-99, 160+198). Insane Persons, ¶8.

7472—The probate court has no jurisdiction to inquire into the mental condition of a person not actually within the territorial limits of the county, whether a legal resident of the county or not (135-99, 160+198). Insane Persons, ¶8.

7477—Testamentary capacity as affected by adjudication of insanity (see 130-92, 153+131). Wills, ¶52(4).

7481—The probate court has no jurisdiction to inquire into the mental condition of a person not actually within the territorial limits of the county, whether a resident of the county or not (135-99, 160+198). Insane Persons, ¶8.

[COMMITMENT OF FEEBLE MINDED, INEBRIATE AND INSANE PERSONS]

[7489—]1. Terms defined—The word "defective" as used in this act shall include the feeble-minded, the inebriate and the insane. The term "feeble-minded persons" in this act means any person, minor or adult, other than an insane person, who is so mentally defective as to be incapable of managing himself and his affairs, and to require supervision, control and care for his own or the public welfare. The term "inebriate" as used in this act means any person incapable of managing himself or his affairs by reason of the habitual and excessive use of intoxicating liquors, drugs or other narcotics. The term "insane" as used in this act means any person of unsound mind other than one who may be properly described as only an inebriate or feeble-minded person. ('17 c. 344 § 1).

By § 21 the act takes effect July 1, 1917.

[7489—]2. **Same—Voluntary admission of defective to state institution—Power of board of control—**Any person who is defective and who desires to receive treatment at a state institution may voluntarily make application to the state board of control for admission thereto, in such form and manner as may be prescribed by the board, and the board may thereupon grant to such applicant admission to the appropriate state institution. ('17 c. 344 § 2)

[7489—]3. **Same—Detention and examination of voluntary patients—**The superintendent of any state institution for defectives is authorized and empowered to detain any person admitted upon his own application as though he had been committed in the manner hereinafter provided, unless otherwise discharged by order of court. If any such person demands his release from such institution, the superintendent thereof shall, if he deems such release unsafe, within three days thereafter file a verified petition with the judge of probate of the county in which the institution is located, praying for the commitment of such defective as hereinafter provided. ('17 c. 344 § 3)

[7489—]4. **Petition for examination of defective—Warrant—**When any person residing in this state shall be supposed to be defective any relative, guardian or reputable citizen of the county in which such supposed defective person resides or is found may file a verified petition in the probate court of the county, setting forth the name and residence of the supposed defective person and the facts necessary to bring such person within the purview of this act. Whereupon the probate judge shall, after investigation, if the petition be sufficient, direct that the alleged defective person be brought before him, and when necessary the court may issue a warrant directed to the sheriff or any constable of the county, or to any person named therein, requiring him to bring such defective person before the court for examination. ('17 c. 344 § 4)

[7489—]5. **Same—County attorney to appear—**Whenever a judge of probate orders an examination he shall notify the county attorney of the time and place of said examination, who shall appear on behalf of the person to be examined and take such action as may be necessary to protect his rights. The court may, and on request of the county attorney, shall issue subpoenas for witnesses. ('17 c. 344 § 5)

[7489—]6. **Same—Board of examiners, how appointed—Feeble-minded person—Notice to board of control—**When such person is produced in court the probate judge shall designate two licensed physicians resident in the state who, with the probate judge, shall constitute a board to examine such person and determine as to his defectiveness. Where the proceeding is for the adjudication of feeble-mindedness the probate judge shall notify the state board of control of the filing of the petition and that a hearing will be had thereon not less than ten days thereafter, whereupon the board may, at its discretion, designate some person skilled in mental diagnosis to attend the hearing, examine the alleged defective and advise the board of examiners. Provided that if the alleged defective person is obviously feeble-minded or an inebriate the probate judge may dispense with the appointment of any board of examiners, with the consent of the county attorney; and may himself hear and determine the matter. ('17 c. 344 § 6)

[7489—]7. **Same—Examination and report—**The board of examiners shall hear all proper testimony offered by any person interested and the court may cause witnesses to be subpoenaed. When the examination is completed, the board shall determine whether or not the person examined is a feeble-minded person, an inebriate or an insane person and shall file in the court a report of their proceedings, including the findings, upon such forms as the state board of control may authorize and adopt. ('17 c. 344 § 7)

[7489—]8. **Same—Commitment of feeble-minded person—Discharge—**If the person examined is found to be feeble-minded, the court shall order him committed to the care and custody of the state board of control, as guardian of his person. Thereafter the board shall have power whenever advisable to place him in an appropriate institution. If, at any time, after study and ob-

servation in such institution, the superintendent is of the opinion that a person so committed is not defective, or that his further residence therein is not required for his own or the public welfare, he shall so report to the state board of control and the board may thereupon discharge such person from its further care and custody.

Provided, that any parent, guardian, relative or friend of a person committed as aforesaid may at any time file a petition for a hearing in the probate court which committed such person, to establish that the further guardianship of the board of control is not required for his own or the public welfare. If such contention is sustained, the probate judge shall order the discharge of such person from guardianship. ('17 c. 344 § 8)

[7489—]9. **Same—Commitment of inebriate or insane person**—If the person examined is found to be an inebriate or insane the judge shall issue duplicate warrants committing him to the custody of the superintendent of the proper state hospital or to the superintendent or keeper of any private licensed institution for the care of inebriates or insane persons. ('17 c. 344 § 9)

[7489—]10. **Same—Execution of warrant**—A copy of such warrant shall be delivered to the sheriff of the county who together with such attendants as shall be designated by the judge of probate, shall deliver the warrant and the patient to the superintendent of the institution designated in such warrant. ('17 c. 344 § 10)

[7489—]11. **Same—Temporary detention**—The probate judge, with the approval of the county board, may provide a place of temporary detention for defectives and make the necessary contracts therefor. Provided that this shall not authorize the construction of a hospital for that purpose. All expense necessarily incurred for such temporary detention of defectives shall be paid by the county. ('17 c. 344 § 11)

[7489—]12. **Same—Parole—Bond**—Upon request of the relatives or friends of any person alleged or found to be insane, or inebriate, they may be permitted to take charge of such person; but in such case the probate judge, or, if such person has been committed to the hospital, the superintendent thereof, may require a bond from such relatives or friends, running to the state, to be approved by the judge or superintendent, as the case may be, conditioned upon the care and safe keeping of such person; provided that no person charged with or convicted of a crime shall be so discharged. ('17 c. 344 § 12)

[7489—]13. **Same—Certificate of discharge or transfer**—Whenever any defective committed to a hospital under this act shall be discharged, or transferred to another institution, the superintendent, upon the day of such discharge or transfer, shall mail to the probate judge of the county from which such person was committed, a certificate stating the fact of such discharge or transfer and the date thereof and the date of commitment, which certificate shall be filed in said court. ('17 c. 344 § 13)

[7489—]14. **Same—Fees—How audited and paid**—The judge of probate shall allow and order paid the following fees for services provided for in this act: to each witness the sum of one dollar per day and actual disbursement for travel and board. To each examiner the sum of five dollars, and fifteen cents per mile for every mile traveled. To the person to whom the warrant of arrest is issued the sum of three dollars per day and actual disbursements and necessary board and lodging of himself and alleged defective while making the arrest. To the person, other than a nurse or hospital attendant, authorized to convey the defective to the place of commitment the sum of three dollars per day and all necessary disbursements for travel and for the support of himself, the alleged defective and authorized assistants. Such amounts shall be audited by the judge of probate and judgment entered of record therefor and shall be paid by the county treasurer upon the written order of the judge of probate and filed with the county auditor who shall issue his warrant on the county treasurer in payment of said sums, and upon pay-

ment thereof said judgment shall be satisfied of record by the judge of probate. The examiner designated by the board of control shall be paid by the state. ('17 c. 344 § 14)

[7489—]15. **Same—Examination and commitment, when resident of another county**—Whenever the alleged defective is found to have his legal residence in some other county he may nevertheless be examined and if found to be defective committed in like manner as persons residing in the county. The necessary costs and expenses of such examination and commitment shall be certified by such court to the auditor of the county in which the examination is held, who shall certify the same to the county auditor where the said alleged defective is found to be a legal resident and shall be paid as other claims against such county. ('17 c. 344 § 15)

[7489—]16. **Same—Proceedings when residence is questioned**—Whenever the auditor of the county to which costs and expenses have been certified denies that such person has a legal residence in his county, he shall send such certificate with a statement of his claim in reference thereto to the state board of control who shall immediately investigate and determine the question of residence and certify its findings to the auditor of each of said counties. Such decision shall be final unless an appeal is taken therefrom within thirty days after its filing. Such appeal may be to the district court of the county from which such person was committed. ('17 c. 344 § 16)

[7489—]17. **Same—Court commissioner to act, when**—Whenever the judge of probate is unable to act upon any petition concerning an alleged defective the court commissioner shall perform all his duties in such case and the authority herein granted to the judge of probate shall be exercised by said court commissioner. ('17 c. 344 § 17)

[7489—]18. **Same—Forms of blanks**—For the purpose of securing uniformity in the practice of examination and commitment of defectives, the state board of control is hereby authorized and empowered to prescribe forms of blanks which shall be used. ('17 c. 344 § 18)

[7489—]19. **Same—False petition, etc.—Penalty**—Whoever for a corrupt consideration or advantage, or through malice shall make or join in or advise the making of any false petition or report aforesaid, or shall knowingly or wilfully make any false representation for the purpose of causing such petition or report to be made shall be deemed guilty of a felony and punished by imprisonment in the state prison for not more than one year or by a fine of not more than five hundred dollars. ('17 c. 344 § 19)

[7489—]20. **Same—Laws repealed**—Sections 4111 to 4126 inclusive, and sections 7464 to 7489 inclusive, General Statutes, 1913, are hereby repealed. ('17 c. 344 § 20)

[7489—]21. **Persons committed to asylum or hospital for insane—Duties of clerk of probate court and superintendent**—Subdivision (1). Whenever after August 1st, 1917, any probate court of this state shall have committed any person to the superintendent of a state asylum, detention hospital or hospital for the insane, and one of the duplicate warrants issued pursuant thereto shall have been returned, with the superintendent's indorsement thereon that the person named therein has been received by him, and filed in such probate court, the clerk of such probate court, or the judge, if there is no clerk, shall make and file with the state board of control, a copy of such warrant and of the indorsements thereon together with such other information as is provided for in this act.

Subdivision (2). Whenever after August 1st, 1917, any person shall be received into any state detention hospital on his own application or pursuant to a determination that such person is mentally disturbed, and in need of treatment therein, under the provisions of chapter 224, Laws 1909 [4083–4090], the superintendent so receiving him shall forthwith mail to the state board of control a written statement setting forth the names of the person so received, the nature, amount and location of any money or other property owned by such person, the time when received, the name and address, if

known, of the relative or guardian, if any, on whose application the determination was made, together with such other information as is provided for in this act.

Subdivision (3). On or before the 3rd day of August, 1917, the superintendent of each asylum, detention hospital or hospital for the insane shall file with the state board of control, a statement in writing of the names of the inmates of their respective institutions committed thereto, also the names of all persons who have been received into any detention hospital without a warrant of commitment and who were inmates thereof on August 1st, 1917. Such statement shall also contain the date of commitment or reception of the inmate, his residence, any information which the superintendent may have as to any money or property which may be owned by such inmate, and the nature, amount and location thereof; the name and address of the guardian of such inmate, if known, also the names and addresses, so far as known, of the relatives of such inmate who are or may be, under the provisions of this act, liable to contribute to the support of such inmate. ('17 c. 294 § 1)

By § 11 the act takes effect August 1, 1917.

[7489—]22. **Same—Duties of superintendent on death, parole, discharge, etc., of patient**—Whenever any person who has been committed to or received into any asylum, detention hospital or hospital for the insane, dies, or is required to leave, or is paroled, or discharged therefrom, it shall be the duty of the superintendent of the institution to at once report in writing such fact and the time of the occurrence thereof to the state board of control.

It shall also be the duty of the superintendent to forthwith report to the state board of control the time when any paroled inmate was returned to his actual custody, either because of the revocation of his parole or the expiration of the period for which he was paroled. ('17 c. 294 § 2)

[7489—]23. **Same—Judge of probate and county attorney to inquire into property of person committed, and of relatives**—It shall be the duty of the judge of probate and county attorney, of the respective counties in this state, upon and in connection with the proceeding and examination of any person petitioned to be committed to a state hospital to fully inquire into the property and estate of such person and the property and estate of the persons upon whom liability is imposed for his care under the provisions of this act, and, in case of commitment of such person, to report such information forthwith to the state board of control upon such blanks or forms of report as it may provide therefor. Such reports shall be accompanied by the recommendation of such officers to the board of control as to what extent the estates or relatives of the persons so committed should be charged with liability under the provisions of this act. ('17 c. 294 § 3)

[7489—]24. **Same—Claim of state for reimbursement—Power of board of control**—For the purpose of defraying the expenses and cost of maintenance of any inmate in a state asylum, detention hospital or hospital for the insane, the state of Minnesota shall have a valid claim for reimbursement to the extent of \$10.00 per month for each such inmate, for all moneys paid and expenses incurred by the state for such maintenance,—first, against the property or estate of such person so maintained, second, against the relatives of such person in the following order, to-wit: spouse, children and parents provided, that if the state board of control shall determine that the property or estate of any such insane person is not sufficient to more than care for and maintain the wife and minor children of such inmate, or that the means and property of the classes of persons herein secondly charged with the liability and cost of the maintenance of such insane person in said institutions, is not more than sufficient to properly provide for themselves and those otherwise dependent upon them, the said board of control shall relieve the estate of such insane person and the relatives of such insane person from a portion or all of such charge or liability as they in their judgment and upon investigation may deem just and proper. In case of increase or decrease in the estate of such insane person, or in the estates of those persons herein secondarily liable for the cost of the maintenance of an insane person in such institutions,

or in case of the death of such persons, or either of them, the board of control is hereby authorized to modify or cancel its previous order made in relation thereto, and from time to time make such other and further order with reference thereto as it may seem just and proper.

In all cases under the provision of this act, the property which under the laws of this state, is exempt from attachment, or sale on any final process, issued from any court, shall be exempt also as to the estates and persons charged with or upon whom any liability is imposed under the provisions of this act. ('17 c. 294 § 4)

[7489—]25. Same—Determination of board of control conclusive—In any action brought as hereinafter provided to enforce any liability created by this act or to collect from the property or estate of any inmate or relative as herein provided, the determination of the state board of control as to the sufficiency of the property or estate of the inmate to properly care for and maintain the wife and children, if any, or either or any of such classes of persons upon whom liability is imposed under the provisions of this act, shall be conclusive unless appealed from as herein provided. ('17 c. 294 § 5)

[7489—]26. Same—Failure of insane person to pay—Action against relatives—When the state board of control shall have determined the liability of the estate or persons herein named to defray the cost of maintenance of an insane person and no appeal taken therefrom as herein provided and shall direct the persons herein charged with the expense and cost of maintenance of insane persons cared for in state institutions as herein provided to pay and demand payment for such maintenance and such persons shall refuse or neglect to make such payment for thirty days after receiving such demand or notice, the state board of control in the name of the state of Minnesota may bring an action against any and all of said relatives and persons and the representative of such inmate and recover against them therefor, and the further sum of \$10.00 as costs of such action in addition to the disbursements in such action. ('17 c. 294 § 6)

[7489—]27. Same—Cancellation or modification of order—Any person who has been ordered to make payment for the support of an inmate in the institutions referred to in this act, the guardian or relative of any such insane person may petition the state board of control for the release from or modification of such order and said board after investigation may cancel or modify its former order if it shall find the conditions warranting such action. ('17 c. 294 § 7)

[7489—]28. Same—Investigation and determination by board of control as to payments by relatives—Collection, how made and disposed of—Assistants—The state board of control shall have the power to make investigation as to the property and estate of persons therein charged with liability for the cost and expense of maintenance of insane persons in state institutions and shall have the power to subpoena witnesses, take testimony under oath and examine any public records relating to the estate of an inmate or relative liable for his or her support. The state board of control shall determine whether such relative shall be required to pay for the support of such inmates or whether such charges shall be made against the estate of such an inmate. An order shall be issued to the persons who are determined liable for such payments requiring them to pay monthly, quarterly or otherwise as may be determined by said board. The board shall make all reasonable and proper efforts to collect such amounts, and in case of inability to collect, the attorney general, upon the recommendation of such board, shall direct the prosecuting attorney of the proper county to collect or institute civil action in the name of the state of Minnesota to recover the amount due with interest. All money received, as herein provided or by suit instituted, shall be paid to the state treasurer and placed in the general revenue fund and a separate account kept thereof. The board may, if it shall find it necessary, appoint one or more competent persons to act under its direction to assist in the carrying into effect the provisions of this act and the salaried and necessary expenses of such agents and other necessary expenses incident to carrying into effect

the provisions of this act, shall be paid upon the order of the state board of control out of the moneys received or collected under the provisions of this act. ('17 c. 294 § 8)

[7489—]29. Same—Appeal to district court—Any person or party feeling himself aggrieved by any order or determination of the state board of control under the provisions of this act may appeal therefrom to the district court of the county in which the person or party resides, but upon any such appeal where any order or determination of the board of control made under the provisions of this act be brought in question such order shall be prima facie evidence of the facts therein stated. Such appeal shall be taken within thirty days after service of notice of the filing of the order or determination of the board of control appealed from. Such appeal may be taken by serving a notice thereof upon the chairman of the said board of control or the secretary thereof and upon filing such notice, with proof of service thereof in the office of the clerk of the district court of the proper county within ten days after service thereof, the said court shall be deemed to have jurisdiction of said appeal and thereafter such proceedings shall be had as in other civil actions triable in said court. On such appeal the court shall have the power to order pleadings to be filed and make any other order necessary to the proper procedure and determination of said appeal. ('17 c. 294 § 9)

[7489—]30. Same—Voluntary payments—That whenever after August 1, 1917, any person who has committed himself or herself for treatment at any state detention hospital, or the relatives, friends, or legal representatives of any person who has been committed to a state asylum, detention hospital or hospital for the insane, desires to pay the whole or any portion of the cost of the maintenance of such person in any of said institutions, in addition to the requirements of this act, the same shall be received and disbursed as other money paid pursuant to the provisions of this act, and said board is hereby directed to establish a schedule of the cost to the state of the care and maintenance of the patients in such institutions. ('17 c. 294 § 10)

APPEALS

7490. In what cases allowed—

Executors may appeal as parties "aggrieved" from an order of the district court quashing a writ of certiorari directed to the probate court to review its order directing that plaintiffs, as executors, pay respondents a certain sum out of the funds of the estate (133-124, 155+906). Appeal and Error, ¶151(3).

The right of creditors, devisees, legatees, or heirs to appeal, under subd. 4 of this section from allowance or disallowance of a claim, is, by § 7491, subordinated to the general right of appeal given the representative of the estate, and it is only when he declines to appeal that the right extends to creditors, etc. (162+356). Executors and Administrators, ¶256(3).

7491. Who entitled to appeal—

126-445, 148+302.

The notice from the probate judge provided for by § 7490 does not limit the right of appeal under this section; that limitation being effected by the notice mentioned in § 7492 (133-20, 157+709). Courts, ¶202(5).

A party entitled to appear in the probate court and object to the probate of a will, but who does not so appear, may appeal to the district court from an order admitting the will to probate (129-248, 152+541). Wills, ¶359.

This section gives an appeal from the allowance or disallowance of a claim against decedent's estate, first, to representative or the interested creditor, and, if representative on request declines to appeal, extends right to creditors, heirs, etc., in general. That objectors to the allowance of a claim against a decedent's estate appeared in the probate court does not entitle them to appeal, where the representative has not declined to appeal (162+356). Executors and Administrators, ¶256(3).

7492. Appeal, how and when taken—

A party aggrieved has six months from the date of the filing of a judgment within which to appeal, unless the adverse party has served him with a written notice of the decision, in which case the right of appeal expires thirty days after the service of such notice. The notice mentioned in this section, and not the one provided for by § 7233 or by § 7490, is the one limiting the time for appeal (133-20, 157+709). Courts, ¶202(5).

The probate court cannot amend its decree after the time for appeal has expired, except in case of fraud, mistake, or surprise (132-176, 156+285). Executors and Administrators, ¶315(3).

7496. Proceedings in certain cases—Trial—

On appeal to the district court from an order of the probate court allowing a will, there is no constitutional or statutory right to a trial by jury of the issues of testamentary capacity and undue influence (131-439, 155+392). Jury, ~~6~~17(3).

Whether there shall be a jury trial of the issues of testamentary capacity and undue influence on appeal from an order of the probate court probating a will rests in the discretion of the district court. On appeal from an order of the probate court admitting a will to probate, the issues of testamentary capacity and undue influence, having been submitted to a jury, may be withdrawn before decision by the jury and decided by the court, though the evidence is such that the court would not have been justified in directing a verdict (131-439, 155+392). Wills, ~~6~~379, 380.

Where the issues of mental capacity and undue influence were submitted to the jury, and the jury found for proponent on the issue as to mental capacity, and for contestant on the other issue, and proponent filed a motion for new trial, which was the only motion filed, the court properly granted a new trial on the issue of undue influence alone (122-463, 142+729). Wills, ~~6~~337.

7497. When judgment affirmed—When reversed—

On appeal under this section the jurisdiction of the appellate court is limited to those matters of which the probate court had jurisdiction (161+392). Courts, ~~6~~202(5).

CHAPTER 75

COURTS OF JUSTICES OF THE PEACE

COMMENCEMENT OF ACTIONS

7521. Failure to appear—Offer of judgment—If either party fails to appear within one hour after the time specified for the return of the process, or to which the cause is adjourned, the justice shall dismiss the action, or proceed to hear the evidence of the party present, and render judgment thereon: provided that in an action upon contract for the payment of money only if the plaintiff shall, at the time of the issuance of the process, file with the justice a verified complaint and shall attach a copy thereof to the process and shall cause a copy of such complaint to be served upon the defendant in the manner prescribed by law for the service of the process in such action, if the defendant fails to appear within one hour after the time specified for the return of the process, or to which the cause is adjourned, the justice shall enter judgment against the defendant on such complaint without requiring proof of the cause of action therein pleaded: provided, further, that a defendant who has appeared may, before answering the complaint, offer to allow judgment to be taken against him for the sum or property in said offer specified, with costs. If the offer is accepted, the justice shall thereupon enter judgment accordingly. If refused, the same is to be deemed withdrawn, and cannot be given in evidence; and, if the plaintiff fails to obtain a more favorable judgment, he cannot recover costs made subsequent to such offer, but must pay the defendant's costs and disbursements made and expended subsequently thereto. (Amended '17 c. 309 § 1)

PLEADINGS AND TRIAL

7522. Time to plead—Adjournment on return day—

Where parties appear on the return day, and on plaintiff's application hearing is adjourned for one week, answer may be filed on the day to which hearing is adjourned. An answer cannot be filed more than one week after return day without consent (124-147, 144+449). Justices of the Peace, ~~6~~92.

Where defendant filed an answer after discontinuance caused by adjournment for more than one week, he waived objection to jurisdiction, though the answer was a nullity because not filed within the time allowed by law (124-147, 144+449). Justices of the Peace, ~~6~~80.

7530. Pleadings verified—

An unverified answer in justice court is a nullity, so far as regards admission of proof thereunder against proper objection; but such an answer is an appearance (124-147, 144+449). Justices of the Peace, ~~6~~84(1), 97.

JUDGMENTS

7554. For costs on dismissal—

Liability of intervener for statutory costs on dismissal of his complaint in intervention (see 131-193, 154+953). Costs, ~~§~~98.

APPEALS

7601. May be taken, when—

Where, in an action on a note, in which a bank intervened, claiming to be a pledgee of the note, whereupon plaintiff withdrew from the action, and later the intervener withdrew, and defendant's motion to dismiss was granted, but his motion for statutory costs against both plaintiff and the intervener was denied as to the latter, defendant was entitled to appeal from the latter order, without appealing from the preliminary order (131-193, 154+953). Appeal and Error, ~~§~~119, 151(5).

7602. Requisites—No appeal shall be allowed unless the following requisites are complied with within ten (10) days after judgment is rendered:

1. An affidavit shall be filed with the clerk of the district court of the county wherein the cause was tried, stating that the appeal is made in good faith and not for the purpose of delay.

2. A bond shall be executed by the party appealing, his agent or attorney, to the adverse party in a sum sufficient to secure such judgment and costs of appeal, with sufficient surety to be approved by the clerk of the district court, conditioned that the appellant shall prosecute his appeal with effect and abide by the order of the court therein.

3. The party appealing shall serve a notice upon the opposite party, his agent or attorney who appeared for him on the trial, specifying the ground of appeal generally as follows: That the appeal is taken upon questions of law alone or upon questions of both law and fact. Such notice shall be served by delivering a copy thereof to the person upon whom service is made, or by leaving a copy at his residence; provided that if any party has appeared by attorney, service upon such attorney may be made in the manner provided in section 7744, subdivision 1, General Statutes of Minnesota for 1913, and the original notice, with proof of service thereof, shall be filed with the clerk of the district court to which the appeal is taken, within ten (10) days after such service is made, and thereupon such clerk shall immediately give notice in writing by registered mail to the justice of the peace before whom the cause was tried.

4. The party appealing shall pay to the clerk of the district court, for the use of the justice before whom the cause was tried, the sum of two dollars, (\$2.00) which is hereby fixed as his fee for making the return, which sum shall be paid to the justice by said clerk upon filing the return of the justice in the office of the clerk, and thereupon it shall be the duty of the clerk to cause an entry of such appeal to be made upon the calendar of the next general term of the district court occurring more than twenty (20) days after the filing of such notice of appeal. (Amended '17 c. 283 § 1)

Where the cause is one of which the district court might take original jurisdiction, defects in the proceedings for appeal may be waived by general appearance (122-352, 142+709). Justices of the Peace, ~~§~~160(7).

Under this section and the two following sections, where no bond was executed on appeal from a municipal court until long after ten days from the rendition of the judgment, and the judge did not allow the appeal, and no return was made, or could legally be made, within 20 days, a motion to docket the case in the district court was properly denied (134-475, 159+751). Courts, ~~§~~190(4).

A proper notice of appeal is essential to confer jurisdiction on the district court (122-352, 142+709). Justices of the Peace, ~~§~~160(1).

Leaving a copy of the notice of appeal at the office of the appellee is not sufficient service under this section (122-352, 142+709). Justices of the Peace, ~~§~~160(4).

In an action on a note, in which a bank intervened, claiming the proceeds of the note as pledgee thereof, whereupon plaintiff withdrew from the case, and defendant thereafter appealed from an adverse judgment with respect to costs, notice of appeal need not be served on plaintiff (131-193, 154+953). Courts, ~~§~~190(4).

7603. Allowance—Effect—

134-475, 159+751.

7604. Return—Evidence, when included—

134-475, 159+751.

7605. Appeals, how tried—Judgment—

On appeal to the district court on questions of law alone, the cause is tried on the evidence returned; and where such evidence does not support a verdict for plaintiff, but discloses a want of meritorious cause of action, it is proper to order judgment for defendant (125-300, 146+1100). Justices of the Peace, *§*189(4).

7609. Defective bond—

This section does not apply, so as to require the granting of a motion to docket an appeal in the district court, where no bond was filed within the time required by § 7602, there being no motion to dismiss and no application to the district court to approve a bond (134-475, 159+751). Justices of the Peace, *§*159(1).

CONTEMPTS**7615. Proceedings—Punishment—**

The maximum sentence that can be imposed by the Minneapolis municipal court for a direct contempt is a fine of \$20 or two days' imprisonment in the county jail (125-304, 146+1102). Contempt, *§*72.

CHAPTER 76**FORCIBLE ENTRY AND UNLAWFUL DETAINER**

7657. Forcible entry or detainer—Restitution—When any person has made unlawful or forcible entry into lands or tenements, and detains the same, or, having peaceably entered, unlawfully detains the same, he shall be fined, and the person entitled to the premises may recover possession thereof in the manner hereinafter provided. (Amended '17 c. 227 § 1)

Unlawful detention, unaccompanied with force, where the original possession was taken peaceably and under claim of right, is not sufficient to authorize proceedings under this section; ejectment being the proper remedy (127-93, 148+893, Ann. Cas. 1916C, 493). Forcible Entry and Detainer, *§*5.

7658. Tenant, etc., holding over—Removal—When any person holds over lands or tenements after a sale thereof on an execution or judgment, or on foreclosure of a mortgage and expiration of the time for redemption, or after termination of contract to convey the same, or after termination of the time for which they are demised or let to him or to the persons under whom he holds possession, or contrary to the conditions or covenants of the lease or agreement under which he holds, or after any rent becomes due according to the terms of such lease or agreement, or when any tenant at will holds over after the determination of any such estate by notice to quit, in all such cases the person entitled to the premises may recover possession thereof in the manner hereinafter provided. (Amended '17 c. 227 § 2)

128-534, 150+1102.

A lease of a farm held not one for two seasons (123-377, 143+978). Landlord and Tenant, *§*95.

Proceedings under this section cannot be maintained against a person who peaceably and under claim of right entered into possession and does not forcibly detain the same (127-93, 148+893, Ann. Cas. 1916C, 493, following and applying 19-174 [Gil. 137]). Forcible Entry and Detainer, *§*4.

7666. Writ of restitution—Effect of appeal—

Cited (123-377, 143+978).

7667. Appeal—Stay—

Where defendants, in their answer, alleged that a writ of restitution was refused on the sole ground that this section did not apply, they cannot be heard to contend on appeal that the bond given by plaintiff was insufficient (123-377, 143+978). Mandamus, *§*167, 187(4).

CHAPTER 77

CIVIL ACTIONS

7673. One form of action—Parties how styled—

Contract or tort (121-296, 141+181, 45 L. R. A. [N. S.] 205, Ann. Cas. 1914C, 720). Action, ¶27(1).

Actions for damages, whether based upon our own statutes or upon those of other states, are governed by our own Code (124-195, 144+942). Action, ¶17.

As to effect of demurrer in legal and equitable actions, in view of the abolition of the distinction between the two kinds of actions, stated (see 129-342, 152+734).

A complaint against a physician, alleging that defendant undertook to set plaintiff's dislocated hip joint, and so negligently and unskillfully conducted the operation as to injure plaintiff, etc., states a cause of action, and is on contract, and not in tort (122-152, 142+143). Action, ¶27(1); Physicians and Surgeons, ¶18(4).

PARTIES

7674. Real party in interest to sue—When one may sue or defend for all—

Interest in general—An abutting owner, whose access to an alley is obstructed, has a special interest different from that of the public at large, and he may sue to protect his rights (127-440, 149+669). Municipal Corporations, ¶671(5).

Where a husband and wife executed a second mortgage without consideration, and after death of the husband the second mortgagee wrongfully refused to execute a release, and the first mortgage was foreclosed at the request of the widow, the widow and the purchaser at the foreclosure sale were entitled to maintain an action to restrain the second mortgagee from redeeming from the foreclosure sale (124-176, 144+761). Mortgages, ¶594(4, 6).

To restrain trespass on Indian lands, the title to which is in the United States, an action will not lie at the suit of the Indians alone, but the United States must be made a party plaintiff (130-510, 153+1088). Injunction, ¶114(1).

The right to sue for breach of covenant which runs with the land rests exclusively in the last covenantee, and an intermediate covenantor has no right of action thereon when he has indemnified such subsequent covenantee (126-14, 147+670). Covenants, ¶80.

A creamery company held not to have sufficient interest to maintain action to restrain enforcement of a police regulation, on the ground that it was unconstitutional, and compliance with it would interfere with plaintiff's business (124-239, 144+764, 49 L. R. A. [N. S.] 951). Injunction, ¶105(2).

Assignments—An agreement to repurchase stock held assignable (128-341, 150+1084). Assignments, ¶18.

An assignee of an agreement by defendant to repurchase stock held entitled to maintain an action to enforce the agreement, though the debt due from the assignor to the assignee, to secure which the assignment was made, was paid after the commencement of the action (128-341, 150+1084). Corporations, ¶121(1).

One to whom an order on a fund is given, for the purpose of paying out of the proceeds the claims of third persons, is the real party in interest, and may maintain an action on the order (127-340, 149+545). Bills and Notes, ¶443(3).

One suing for many—For practical reasons courts ought not to entertain suits at the instance of individual consumers to enjoin a public service corporation from placing in effect a schedule of rates which does not exceed the maximum fixed by the proper legislative body (130-71, 153+262, Ann. Cas. 1916B, 286). Injunction, ¶114(2).

7676. Executor, trustee, etc., may sue alone—

A party to a contract, by which defendant sold his transfer business and agreed not to engage in business in a certain city, may maintain injunction to restrain a violation of the covenant, though he made the purchase for an undisclosed principal and had no interest in the transaction, except under a contract with the principal to employ him if he made the purchase (124-40, 144+415). Principal and Agent, ¶144.

7677. Married women may sue or be sued alone—

In forcible entry and detainer, brought by a married woman to recover possession of her own property, the husband is not a necessary party (123-270, 143+785). Husband and Wife, ¶210(3).

7681. Parent or guardian may sue for injury to child or ward—Bond—Settlement—

Under this section, prior to its amendment in 1907, a father could settle for an injury to his child without suit brought (130-3, 153+250). Parent and Child, ¶8.

7683. Joinder of parties to instrument—

This section does not apply to actions for tort (134-461, 159+1081). Action, ¶45(3).

7685. Action not to abate by death, etc.—Torts—

Effect of death on jurisdiction—A judgment for or against a decedent is not void when jurisdiction was acquired prior to the death; but it is otherwise where the party was dead at the commencement of the action (132-409, 157+648). Judgment, ¶12.

Motion for substitution—An order made under this section, on motion of plaintiff, substituting appellants as parties defendant in place of the original defendant, who had died, is appealable (131-365, 155+396). Appeal and Error, ¶95, 128.

Where an *ex parte* order, made under § 7690, joining appellants as additional defendants, was vacated, the only question properly before the court was whether appellants were necessary parties to a full determination of the controversy between the original parties, and the order of vacation was not necessarily a bar to an application subsequently made under this section to substitute appellants for the original defendant, who had died (131-365, 155+396). Judgment, ¶569.

Substitution granted—An action to restrain obstruction of a roadway, the issue being whether, by virtue of an agreement relative to the opening of the way and the acts done under such agreement, the roadway became a town road, affects interests in land, and does not abate upon the death of a party (133-128, 156+7). Abatement and Revival, ¶58(2).

A suit to cancel a beneficiary certificate does not abate by the death of insured before judgment, or by the commencement of an action by the beneficiaries to recover on the certificate before they are made parties in the equity suit (132-422, 157+646). Abatement and Revival, ¶63.

Under this section a suit in equity, brought during the lifetime of insured, to cancel a certificate of membership in respondent association, does not abate by the death of insured, and the beneficiaries in the certificate may be substituted as defendants, whether they be regarded as "representatives" or "successors in interest"; and the suit does not abate because plaintiff has, since the death, an adequate remedy at law. It is immaterial under this section that the complaint, as originally filed, and existing at the time of the motion for substitution, does not state a cause of action against the defendants sought to be brought in as parties (131-365, 155+396). Abatement and Revival, ¶63.

Practice in supreme court—Practice in supreme court, on suggestion of death of party before commencement of action, stated (132-409, 157+648).

7690. Bringing in additional parties—

Where a special administrator was not entitled, under § 3514, to collect the proceeds of a beneficiary certificate, the beneficial association, in an action on the certificate, could not bring in such special administrator as a party defendant under this section (122-221, 142+316). Executors and Administrators, ¶438(1).

Where an *ex parte* order, made under this section, joining appellants as additional defendants, was vacated, the only question properly before the court was whether appellants were necessary parties to a full determination of the controversy between the original parties, and the order of vacation was not necessarily a bar to an application subsequently made under § 7685 to substitute appellants for the original defendant, who had died (131-365, 155+396). Judgment, ¶569.

LIMITATION OF ACTIONS**7694. General rule—Exceptions—**

A statute of limitations operates prospectively, unless a legislative intent to give it a retrospective operation is clear. The postponement of the time when a limitation statute becomes effective evidences an intent to make it of retrospective operation (134-21, 158+715). Limitation of Actions, ¶6(1).

Contract stipulations, limiting time within which action may be brought and not unreasonable, are valid (125-512, 147+651). Limitation of Actions, ¶14.

In determining whether a cause of action is barred, the day upon which it accrued is excluded, and the statute ceases to run when the complaint is drawn and the summons served, though the complaint be demurrable, since it is amendable (134-78, 158+908). Limitation of Actions, ¶123; Time, ¶9(2).

Where an insurance contract suspends the right of action thereon until the doing of certain acts by the insurance company, the limitation period commences to run from the time such suspension has terminated (125-512, 147+651). Insurance, ¶622(3).

Where a second mortgage was executed without consideration, a cause of action to restrain the mortgagee from redeeming from a foreclosure sale under the first mortgage did not accrue until the second mortgagee refused to release his mortgage or otherwise asserted its validity (124-176, 144+761). Limitation of Actions, ¶60(1).

7695. Bar applies to state, etc.—Exception—

A strip of land held to have become a street by virtue of a plat, and of long-continued user by the public (123-344, 144+150). Dedication, ¶44.

Title to a strip of land claimed by a city as a part of the street held acquired by the abutting owner by adverse possession, within the rule laid down in 101-378, 112+385 (129-59, 151+532). Adverse Possession, ¶114(2).

A person may be in the adverse possession of land, though it is traversed by public streets, and, while he cannot acquire the public easement, he may acquire title to the portions not dedicated to the public use, and he may also acquire title to the fee of the streets (132-311, 156+350). Adverse Possession, ¶8(2).

7696. Recovery of real estate, fifteen years—

126-488, 148+296.

In general—The optionee under a 50-year option for a 30-year mining lease is not barred by this section from asserting a right under the option because he has not been in possession within 15 years, where neither party has been in actual possession during that time (134-412, 159+966). Limitation of Actions, ¶19(1).

Adverse possession for the statutory period held not necessary in order to take an executed parol gift of land out of the statute of frauds (126-389, 148+125). Frauds, Statute of, ¶129(7).

A perfect legal title to land is never lost by abandonment (124-393, 145+30). Abandonment, ¶7.

Boundary lines—Evidence on the issue of determination of a boundary line by adverse possession for 15 years held insufficient to support a verdict for plaintiff (124-233, 144+758). Adverse Possession, ¶114(2); Boundaries, ¶37(1).

One is not to be deprived of his land because, through mistake or ignorance, he placed a fence on what he thought was the division line, when it was not such in fact, unless the evidence of practical location is clear, positive, and unequivocal (124-233, 144-758). Boundaries, ¶48(7).

Inclosure by fence constructed by adverse party. Sufficiency of adverse user to overcome true line (121-468, 141+788). Boundaries, ¶37(1).

Color of title—Possession may be adverse and hostile without color or claim of title, and it may originate in trespass (134-430, 159+830). Adverse Possession, ¶68.

The possession must be on an assertion of a claim of right, and must not possess the appearance of a mere trespass. The action of a city in taking possession of land donated to it for a site for a fire house held not a mere trespass, but an assertion of title supporting a claim of adverse possession (125-484, 147+655). Adverse Possession, ¶24, 64.

Degree of proof required—The evidence must be clear and convincing to justify a finding of title acquired by adverse possession (134-430, 159+830). Adverse Possession, ¶85(3).

Evidence held to sustain a finding against a claim of title by adverse possession (125-484, 147+655). Adverse Possession, ¶24, 64.

Evidence held to establish title to real estate by adverse possession (127-397, 149+647). Adverse Possession, ¶85(3).

Possession must be visible—Possession must be shown for the full period of fifteen years. The possessory acts must appear upon the land itself, and be such as to indicate an intention to appropriate it permanently. Giving permission to a third person to cut hoop poles and receiving pay for such poles is not sufficient (124-393, 145+30). Adverse Possession, ¶16(1), 40.

Possession must be hostile and under claim of right—The possession must be maintained under a claim of ownership, and if the person in possession recognizes title in another his holding is not adverse (125-24, 145+404). Adverse Possession, ¶60(3).

The terms "claim of title," "claim of right," and "claim of ownership" defined (see 132-311, 156+350). Adverse Possession, ¶12.

"Hostile" possession defined (see 132-311, 156+350). Adverse Possession, ¶58.

Continuous possession—There is no forfeiture to the state of land not redeemed within three years after a tax sale to the state, and hence failure to redeem does not interrupt the continuity of the possession of one holding adversely (132-311, 156+350). Adverse Possession, ¶46.

Acquisition of a tax certificate by one in adverse possession held not to break the continuity of his possession, though he made an assignment of the certificate (132-311, 156+350). Adverse Possession, ¶52.

Payment of taxes—Rule as to payment of taxes held to apply with less force in a case where the occupant is under a legal duty to pay the taxes as assessed (123-344, 144+150). Adverse Possession, ¶95.

Payment of taxes, though evidence of a claim of title, is not evidence of adverse possession (124-393, 145+30). Adverse Possession, ¶88.

Questions for jury—121-468, 141+788.

7701. Various cases, six years—

Subd. 1—An action for breach of contract to convey land, commenced in 1912, the breach occurring in 1901, is barred by the six-year statute (125-88, 145+799). Limitation of Actions, ¶46(9).

Repairs made during three successive years on separate orders for each year's work, the price of each year's work becoming due at its completion, did not constitute a running account, and the statute began to run on the work of a year as soon as it was completed (161+593). Limitation of Actions, ¶51(1).

This subdivision, and not § 7703 subd. 1, governs an action on the bond of a saloon keeper for acts constituting an assault (131-136, 154+795, L. R. A. 1916E, 269). Limitation of Actions, ¶21.

Cause of action on an insurance policy to recover one-half the amount of the policy for permanent disability held not barred until the lapse of six years after the exercise of his option to take under the clause of the policy giving the right to recover one-half of the face amount of the policy; the statute of limitations not having been put in operation by the mere occurrence of the disability (133-409, 158+625). Limitation of Actions, ¶66(6).

Subd. 2—Cause of action to enforce double liability of a stockholder accrues when insolvency of the corporation is declared and a receiver is appointed, and not at the time that an assessment is declared (161+498). Limitation of Actions, §58(4).

Subd. 3—Continuing injury to land; plaintiff may recover for damage suffered during six years prior to commencement of suit, though the wrongs complained of began prior to that time (129-113, 151+968). Limitation of Actions, §55(6, 7), 174(1).

Subd. 5—An action for malicious prosecution of a civil suit is governed by this section and subdivision, and not by § 7703 subd. 1 (123-17, 142+930, L. R. A. 1915B, 1179, 1195). Limitation of Actions, §55(4).

Subd. 6—The provision as to discovery of fraud applies to copartnership settlements. The burden is upon a plaintiff seeking a recovery for fraud, when his cause of action is apparently barred, to allege and prove that he did not discover it until within six years. Evidence held to show that an action to set aside a partnership settlement was brought within six years after discovery of the fraud relied on to avoid the settlement (134-279, 158+426). Limitation of Actions, §197(2).

A party in legal contemplation knows the facts constituting the fraud, when in the exercise of reasonable diligence he should have known them by proper inquiry (134-279, 158+426). Limitation of Actions, §100(13).

7703. Various actions, two years—

An action for malicious prosecution of a civil suit is governed by § 7701 subd. 5, and not by this section (123-17, 142+930, L. R. A. 1915B, 1179, 1195). Limitation of Actions, §55(4).

A complaint against a physician, alleging that defendant undertook to set plaintiff's dislocated hip joint, and so negligently and unskillfully performed the operation that plaintiff became a cripple for life, states a cause of action on contract, and hence not within this section (122-152, 142+143). Limitation of Actions, §55(3); Physicians and Surgeons, §18(4).

Action on saloon keeper's bond for acts constituting a tort ordinarily within this subdivision is not barred until six years after the cause of action accrues (131-136, 154+795, L. R. A. 1916E, 269). Limitation of Actions, §21.

[7704]—1. Judgment note, etc., authorizing confession of judgment—One year—No action shall be maintained upon any judgment note or other instrument, heretofore or hereafter executed, containing any provision authorizing a confession of judgment thereon, unless begun within one year after the cause of action shall have accrued. ('15 c. 222 § 1)

Section 3 repeals inconsistent acts, etc.

By § 4 the act takes effect November 1, 1915.

[7704]—2. Judgment or decree, etc., by confession, etc.—One year—No action shall be maintained upon any judgment or decree of any court of the United States, or of any state or territory thereof, heretofore or hereafter entered upon a plea of confession under any warrant of attorney or other instrument signed by the debtor authorizing such confession, unless the action upon such judgment be begun within one year after the rendition or entry thereof. ('15 c. 222 § 2)

7707. When action deemed begun—Pendency—

As to when action is deemed commenced (see 124-195, 144+942). Action, §64.

Evidence held to show that a proceeding to register a land title was pending, so as to abate an action to determine adverse claims subsequently brought (127-416, 149+735). Abatement and Revival, §7.

7708. Effect of absence from state—

124-195, 144+942.

7710. Periods of disability not counted—

Possibility of exceptions operating in favor of plaintiff whose complaint shows on its face that the cause of action set up was barred by limitations as precluding demurrer (see 129-342, 152+734). Limitation of Actions, §177.

Under the fifth subdivision of this section the period of limitation is not extended for more than five years by an injunction staying an action, nor in any case for more than one year after disability ceases; and a cause of action to recover payments for transportation of freight in excess of the rates fixed by §§ 4298-4304, accrued when payments were made, and not upon the dissolution of an injunction then in force restraining the putting into effect of the statutory rates (135-45, 159+1082). Limitation of Actions, §111.

7712. New promise must be in writing—

Notwithstanding § 8449, post, where a note shows on its face that it is more than six years past due, if the holder relies on part payment to avoid the bar of the statute, the burden is upon him to prove it, and it is error to charge the jury that the burden is on defendant to prove that the payment was not made at the date of the indorsement (133-289, 158+391). Limitation of Actions, §195(6), 200(2).

VENUE

7714. General rule—Exception—

That a proceeding for the collection of an assessment against stockholders of an insolvent corporation, under § 6646, was pending in one county, while the final hearing upon the petition for the assessment was had in an adjoining county was not error, where the adjournment to the latter county was by consent of both parties (132-9, 155+754). Corporations, ¶263(1).

7715. Actions relating to land, situs to govern—

An action for damages for fraudulent representations as to certain land sold by defendants to plaintiff is transitory (134-332, 159+788). Courts, ¶7.

St. Cloud City Charter § 275, as to venue of actions by or against city, *held* not applicable to actions for recovery of real estate, such actions being governed by this section (129-240, 152+408). Venue, ¶5(3).

An action for either a decree ordering a cancellation of plaintiff's deed to Nebraska land, or a judgment for damages for the alleged fraud of the defendants, is a transitory action, triable where defendants reside (162+351). Venue, ¶5(4).

An action to recover damages for breach of a contract to establish a railway station upon plaintiff's land is not within this section, and the action need not be brought in the county in which the land is located (133-442, 158+719, L. R. A. 1916F, 687). Venue, ¶5(5).

7718. Replevin—

Before it can be held that the action was brought in replevin solely to avoid a change of venue, it must appear conclusively that damages for conversion of the property is the only remedy available (130-103, 153+266). Venue, ¶16.

On application to change the venue on the ground that the cause of action was in fact for conversion, and that plaintiff had put it in the form of one for replevin to avoid a change of venue, the clerk cannot look beyond the complaint and transfer the cause, but the court may do so (130-103, 153+266). Venue, ¶72.

7721. Other cases—Residence of defendant—Residence of corporations—

Actions in municipal courts are within the provision of this section that the residence of railroad companies for the purpose of actions against them shall be any county into which their lines extend; and where the venue in such an action is properly laid, defendant has no right under § 272 to change the venue to another municipal court in the same county, though the latter is nearer its principal general office in the state, and its principal place of business in the county (128-225, 150+924). Courts, ¶180(2, 3).

Personal service of summons on defendant at his residence in one county will not support a default judgment in the district court of another county (161+1054). Judgment, ¶16.

CHANGE OF VENUE

7722. As of right—Demand—

Change of venue in election contest—Changes of venue in election contests are controlled by § 529 (126-404, 150+625). Elections, ¶277.

As a matter of right—The clerk cannot look beyond the complaint to ascertain whether an action in replevin was brought in that form to avoid a change of venue; the court alone possessing that power (130-103, 153+266). Venue, ¶72.

When demand must be made—Whether the demand provided for by this section was made seasonably must be determined from the whole record, and if defendant's affidavit shows his nonresidence, that fact must be contested in the court to which the change is made; but the court in which the action is brought is not bound to surrender jurisdiction unless the record shows a right to the change (127-324, 149+536). Venue, ¶40, 70, 72.

Demand for change of venue, made after the 20 days, is too late, though the time for answering has been extended and has not yet expired; and a stipulation extending the time for answering does not extend the time for making application for change of venue (127-324, 149+536). Venue, ¶61.

Several defendants—An individual defendant is not entitled to a change of venue to the county of his residence, where a municipal corporation is a codefendant, which does not join in the application for the change, such municipal corporation not having been made a defendant for the purpose of preventing a change of venue. Such change of venue could not be granted because the complaint was demurrable as to the municipal corporation for failure to allege the statutory notice before the commencement of the suit; the city not raising such defense (132-219, 150+284). Venue, ¶41.

The words "if the numbers be equal, in that whose county seat is nearest," have no application where less than a majority demand a change of venue. Where two defendants are served in the county in which one of them resides, the nonresident defendant cannot, on his sole motion and affidavit, secure a change of venue to the county of his residence (122-377, 142+817). Venue, ¶22(1).

7723. By order of court—Grounds—

Where there was nothing in the record to show that one defendant was not made a party to prevent a change of venue under this section, the supreme court could not disturb the judg-

ment for plaintiff because of the trial court's refusal to grant a change of venue (131-489, 154-789). Appeal and Error, [§966](#).

7727. Prejudice or bias of judge—Affidavit—

This section does not permit the defendant in a divorce suit to have the application of the plaintiff for temporary alimony and custody of the minor children pending suit transferred to another judge, by filing an affidavit of prejudice against the judge before whom the application is made (135-307, 160-778). Judges, [§49\(1\)](#).

[7727—]1. Expenses of trial when to be paid by county in which action was commenced—Whenever the venue hereafter shall be changed in a civil action upon the consent of parties, with or without an order of court, to a county other than the one where the same is properly triable or by an order of court under either subdivision three (3) or four (4), of section 7723, General Statutes 1913, the expenses of the trial of such action, including officers and jurors fees, and all expenses caused by the trial of such action which would not otherwise have been incurred by the county where the same is tried shall be paid by the county in which such action was commenced. ('17 c. 421 § 1)

[7727—]2. Same—To be first paid by county in which action is tried—Statement to county in which action originated—Such expenses shall be paid in the first instance by the county in which the action is tried, and thereupon the clerk of court of said county shall prepare, under his hand and seal, an itemized statement of such expenses, and upon approval thereof by the judge of the court in which said trial was had, and the filing of such itemized statement and approval in the office of the county auditor in which such action was commenced, such auditor shall issue his warrant for the amount of such approved statement in favor of the county in which the trial was had. ('17 c. 421 § 2)

SUMMONS—APPEARANCE—NOTICES, ETC.

7728. Actions, how begun—

An action is deemed as commenced when the summons is delivered to the proper officer for service, if such service be completed within the prescribed time. There is no other way of commencing a civil action in this state than that prescribed by this section, and the form of the summons and the manner of its service is governed by this Code (124-195, 144-942). Action, [§64](#).

The Code provisions as to commencement of actions must be construed as a whole, so as to give effect to the intention to provide a single uniform course of procedure which shall apply alike to all civil actions (124-195, 144-942). Limitation of Actions, [§5\(2\)](#), 118(1).

7729. Requisites of summons—Notice—

A summons is not a process, within §§ 7783, 7786, relating to amendments, but is a document in the action, which may be amended by leave of court (131-173, 154-952). Process, [§163](#).

A default judgment entered in the district court is not supported by service of a summons purporting to have been issued out of the municipal court (161-1054). Judgment, [§17\(2\)](#).

7732. Service of summons—On natural persons—

Exemption of nonresident attorney in state for taking of depositions (see 135-317, 160-795, L. R. A. 1917C, 431).

7735. Same—On private corporations—

Cited (132-389, 157-642).

Subd. 3—130-35, 152-1102.

Section 3555, and not this section, has reference to foreign beneficiary associations transacting business in this state (131-131, 154-748). Insurance, [§16](#), 814.

Under subd. 3 of this section the salesman of a foreign corporation soliciting orders for work to be done outside the state and fully authorized to act as to a contract for work made in the state, was an agent of the corporation on whom service might be made (162-1068). Corporations, [§668\(10\)](#).

Under the provision of subd. 3 of this section, that service may be made on any agent for the solicitation of freight or passenger traffic, jurisdiction may be acquired over a foreign corporation doing business in the state by service on such an agent in a transitory action, though the cause of action did not arise in the state (134-261, 159-272, 134-479, 159-947). Railroads, [§33\(2\)](#).

Summons in an action against a foreign corporation held properly served on its president, who resided in this state, and who occasionally performed corporate duties therein; the action having grown out of a sale of stock made by a traveling agent in this state (129-282, 152-410, L. R. A. 1916E, 241). Corporations, [§642\(2\)](#).

An agent maintained by several foreign railroad companies operating connecting lines for the solicitation of business in this state is the agent of each of such companies and may be served with process. The designation of the agent to be served by the statute is valid, and, being assented to by the corporation by its act in sending the agent into this state, the service is binding on it. The designation of such an agent is due process of law, and will support the service of process in a suit growing out of the business so solicited and obtained (129-204, 151+917, L. R. A. 1916E, 232, Ann. Cas. 1916E, 335). Constitutional Law, §309(3); Corporations, §662, 665(2), 668(4).

Where a foreign corporation, engaged in manufacturing and selling shoes, makes contracts with local retailers by which the latter agree to adopt a particular name for their stores, to sell the corporation's shoes exclusively, and keep the stock insured for the benefit of the corporation, and by which the corporation agrees to extend credit for shoes furnished and to pay the expense of advertising for the first year, service of process on a state representative of the corporation, who has charge of its business in the state, establishes stores, and sells shoes to the stores personally and through salesmen, is good as against the corporation, since the activities of the corporation constitute the doing of business within the state (134-245, 158+975). Corporations, §668(1).

A foreign corporation having an agent in this state, who appointed salesmen, to whom goods were furnished from a stock of goods kept at the office of such agent within the state, was doing business within this state, and summons served on such agent conferred jurisdiction (131-335, 155+103). Corporations, §642(1).

A foreign corporation, on whose agent within the state summons was served, held to be doing business in the state of a character and extent necessary to warrant the inference that it had subjected itself to the jurisdiction and laws of this state. The president of a foreign corporation residing within the state is an agent "of sufficient rank and character as to make it reasonably certain that the corporation will be notified of the service," within the decisions (131-162, 154+950). Corporations, §668(15).

7737. Service by publication—Personal service out of state—

This and the following section are applicable to proceedings under §§ 8717-8726 (126-95, 147+953).

Personal service on defendants outside the state has the same effect as service by publication (123-431, 144+138, 52 L. R. A. [N. S.] 1061). Judgment, §17(3).

While ordinary service by publication in a divorce suit will not support a personal judgment for alimony, whether the defendant is a resident or nonresident of the state, such a judgment may be based on service by publication had on an affidavit that defendant is a resident of the state, is living therein, but cannot be found, because he secretes himself so that personal service cannot well be made on him (135-397, 161+148, L. R. A. 1917C, 1140). Divorce, §202.

7738. Same—In what cases—

126-95, 147+953; note under § 7737.

Subd. 3—If the conveyance of real estate made by a nonresident debtor is fraudulent as to creditors, the land remains the property of the debtor as against such creditors, and may be seized by them on a writ of attachment as the basis of an action against such nonresident. The service of a summons upon a nonresident debtor in an action to recover the debt cannot be set aside, upon affidavits that he has no interest in the property upon which attachment has been levied as the basis of the action, since the validity of the conveyance cannot be determined upon affidavits, nor in an action to which the claimant thereunder is not a party (123-364, 143+915). Fraudulent Conveyances, §228.

In an action against a nonresident to recover a debt, the jurisdiction of the court is limited to the property of the debtor seized under proper process. The court may make any form of decree known to the law, which can be enforced through its control of property within the state over which it has acquired jurisdiction by publication (123-431, 144+138, 52 L. R. A. [N. S.] 1061). Judgment, §17(3), 807.

Where defendant in an action to determine adverse claims is a resident of the state, and has a record title in which his surname appears somewhat different from his true name, but such that from it he could be found and served within the state, jurisdiction cannot be acquired of him by publication (129-270, 152+640). Process, §87.

Subd. 4—135-397, 161+148, L. R. A. 1917C, 1140; note under § 7737, ante.

7739. When defendant may defend—Restitution—

In general—In opening an interlocutory judgment in partition, and granting leave to answer, upon the application of a nonresident, under this section, the court may impose terms, though the applicant has not been guilty of laches. The terms, however, should not be such as to deprive the applicant of any substantial right as claimed in his proposed answer, or such as are burdensome; the applicant not being guilty of laches and making his application within the year. It was therefore improper to require the applicant to stipulate to accept and abide by the judgment already entered, in so far as it had been executed by a sale, to pay into court a sum of money sufficient to pay all expenses of the sale and the costs, and to disclaim the undivided one-half interest in the property decreed to plaintiff (123-471, 144+140). Judgment, §167.

Upon the application it is not proper to try the merits of the proposed answer (123-471, 144+140). Judgment, §163.

Diligence in making application—The defendant, to whom a copy of the summons is delivered in person without the state, is not personally served within this section; the service

being merely an equivalent of summons by publication. From the time defendant, served by publication, has knowledge of the commencement of the suit, he must proceed with diligence to make his defense. Defendant, to whom summons was delivered in person in New York, held not guilty of inexcusable neglect in failing to answer in time (122-396, 142+714, Ann. Cas. 1916B, 563). Judgment, ¶142.

7741. Jurisdiction, when acquired—Appearance—

Presence at a general term call of the calendar, when the case is set for trial, without participation or objection, is not a general appearance (122-352, 142+709). Appearance, ¶8(1).

An order, entered upon a special appearance, to show cause why the service should not be set aside, did not convert the special appearance into a general one, though it enlarged the time for answering in the event that the service should be upheld. A special appearance to contest the service is not made general by an adjournment, granted at defendant's request, of the hearing upon the order to show cause (122-245, 142+310). Appearance, ¶9(3).

As to time when action is deemed commenced (see 124-195, 144+942). Action, ¶64.

7742. Appearance and its effect—

Appearance by appellee in district court waives defects in proceedings for appeal from judgment of justice of the peace (122-352, 142+709). Justices of the Peace, ¶160(7).

An unverified answer in justice court, though a nullity, is an appearance (124-147, 144+449). Justices of the Peace, ¶84(1).

An attempt to demur in justice court is an appearance (124-147, 144+449). Justices of the Peace, ¶84(1).

7745. Same—By mail—When and how made—Effect—

This section deals exclusively with the service of pleadings, notices, and the like in legal actions or proceedings, and has no reference to notices under private contracts, as to which there is no statutory requirement (129-335, 152+723, L. R. A. 1916B, 1114). Notice, ¶10.

7746. Defects disregarded—Amendments, extensions, etc.—

This section does not confer on the court power to enlarge the time fixed by statute for making a demand for a review by a jury of the order of the court fixing the amount of benefits or damages in a judicial ditch proceeding (131-372, 155+626). Drains, ¶82(1).

That plaintiff and the court, in entering a judgment of dismissal on stipulation, overlooked the fact that a new action was barred by a contract provision, was an "omission" or "mischance" for which the court could grant relief against such judgment (131-246, 154+1099). Dismissal and Nonsuit, ¶43(4).

Refusal to require plaintiff to elect between several causes of action which in fact were tried as one, even if error, was without prejudice (127-490, 150+218). Appeal and Error, ¶1089(9).

Complaint in action for breach of contracts for sale of lumber held sufficient, as against an objection to the introduction of evidence thereunder (123-122, 143+253). Pleading, ¶428(2).

MOTIONS AND ORDERS

7749. Defined—Service of notice—

Under this section, an order to show cause, in proper form and properly served, is as effective as a statutory notice of motion to bring into court the party to whom it is directed and to give jurisdiction (162+523). Motions, ¶24.

The time of notice of an application for settling a case, as prescribed by § 7832, may be shortened by an order to show cause under § 7749 (125-475, 147+654). Appeal and Error, ¶568.

The granting of leave to renew a motion on the same facts is within the discretion of the court (122-154, 141+1134; 122-154, 142+134). Motions, ¶43.

Misnomer of corporate defendant by adding to its name the words "Relief Department," may be taken advantage of by motion to dismiss, instead of by plea in abatement (133-434, 158+711). Parties, ¶95(5).

7750. Motions, etc., where noticed and heard—

Findings are not proper on motion for judgment on the pleadings. On motion by relator in mandamus for judgment on the pleadings, the court looks to the allegations of the writ admitted by the return and the allegations of new matter in the return (129-181, 151+970). Pleading, ¶350(3).

Upon motion for judgment on the pleadings, every reasonable intendment will be given the pleading attacked (125-118, 145+812). Pleading, ¶350(3).

Where the supplemental answer in ejectment stated that plaintiff took possession after commencement of the action, but did not allege that such possession was acquired by force or wrongfully, and apparently it could not have been acquired otherwise than by defendant's voluntary act, plaintiff was entitled to judgment on the pleadings (124-538, 144+1090). Ejectment, ¶79.

Judgment on the pleadings for failure to reply may be opened on motion of plaintiff, and leave given to file reply (122-154, 141+1134; 122-154, 142+134). Judgment, ¶145(1).

7751. Same—Ex parte motions—

In replevin to recover a piano sold to defendant on a conditional contract, an answer setting up a warranty and a breach thereof presents a proper counterclaim (126-461, 148+307). Set-Off and Counterclaim, ¶29(1).

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PLEADINGS

7753. Contents of complaint—

In general—A complaint should allege ultimate and issuable facts, and not conclusions of law or evidentiary facts (131-122, 154+945). Pleading, ¶8(1).

Pleading conclusions (129-240, 152+408). Pleading, ¶8(1).

The complaint must present some definite theory on which recovery is sought (122-59, 141+1105). Pleading, ¶18.

Facts going to prove estoppel in pais need not be pleaded (125-54, 145+622). Estoppel, ¶110.

A complaint which discloses delay in seeking equitable relief must contain allegations excusing the delay and negating laches; and such allegations must set forth the facts from which the court can determine whether or not the delay is excused (131-109, 154+793). Pleading, ¶67.

A complaint by a taxpayer against the county auditor and county treasurer for failure to comply with the requirements of §§ 2059 and 2067 in the writing of the words "Sold for taxes" on the tax list and tax receipts held to state a cause of action, at least against the auditor (123-159, 143+257, 51 L. R. A. [N. S.] 137). Counties, ¶91.

A complaint held to state a cause of action to restrain breach of a restrictive building covenant (126-334, 148+286). Injunction, ¶62(3), 118(1).

A naked allegation that one of the signers of a petition to vacate a street signed the same conditionally, with nothing to indicate the nature of the condition, does not show that the signature was invalid (129-259, 152+412). Municipal Corporations, ¶657(1).

Vague allegations that an expenditure of money by a village for the purchase of land to open a street is an extravagant waste of funds of the village, without stating any facts on which the court can form any judgment, are not sufficient to warrant an injunction (129-259, 152+412). Municipal Corporations, ¶995(1).

Complaint seeking to restrain gas company from enforcing alleged discriminatory rates must allege facts showing the discrimination; mere general averments of discrimination being insufficient (130-71, 153+262, Ann. Cas. 1916B, 286). Injunction, ¶118(1).

Personal injuries—A complaint in an action against a city held to state a cause of action (130-410, 153+619). Municipal Corporations, ¶816(1).

Complaint, in action by employé for injuries due to failure of employer to guard dangerous machine, held to state a cause of action (123-76, 142+1045). Master and Servant, ¶258(12).

A complaint alleging that defendants, between whom the relation of master and servant existed, negligently drove against plaintiff, held to state a cause of action against the master (124-155, 144+462). Master and Servant, ¶329.

The pleadings in a negligence case must show a causal connection between the negligence charged and the injury (123-254, 143+783). Negligence, ¶111(3).

Complaint in a personal injury action held not to show that the negligence alleged was the proximate cause of plaintiff's injury (123-254, 143+783). Master and Servant, ¶258(1).

Complaint for personal injuries received at a baseball ground, owing to the absence of a screen for protection of patrons in the grand stand, held to state a cause of action (122-327, 142+706, 46 L. R. A. [N. S.] 606, Ann. Cas. 1914D, 922). Theaters and Shows, ¶6.

A complaint construed to allege negligence, not alone as to speed, but as to the management of an automobile (125-431, 147+434). Carriers, ¶314(2).

A general allegation of permanent injury resulting from an assault and battery held sufficient to admit evidence of the nature and character of the injury (124-260, 144+950). Damages, ¶158(1).

Complaint for injuries to railroad employes need not plead federal employers' liability act (121-269, 141+175). Master and Servant, ¶256(1).

Allegations in an action for wrongful death held not to justify an inference that decedent was guilty of contributory negligence (126-133, 147+964). Master and Servant, ¶256(1).

Complaint held sufficient to show negligence on the part of a railroad company in leaving a car standing without brakes, whereby it was propelled against an employé without notice or warning (126-133, 147+964). Master and Servant, ¶258(13).

Complaint held to sufficiently plead negligence of defendants in ordering plaintiff, a servant, into a dangerous place without warning (130-28, 153+134). Master and Servant, ¶258(19).

Plaintiff may allege all the facts which give rise to his cause of action, and may recover if he prove sufficient of such facts to entitle him to relief. Thus, in an action for damages resulting from negligence, he may allege all the grounds giving rise to his cause of action, and is not required to elect at the beginning of the trial whether he will establish by his proofs one or another of such grounds (131-317, 155+200). Pleading, ¶369(3), 389.

Statement of cause of action against interstate carrier failing to comply with federal safety appliance act (121-335, 141+297). Master and Servant, ¶256(1).

Other torts—Complaint against physician for malpractice held to state a cause of action (122-152, 142+143). Physicians and Surgeons, ¶18(4).

In action in ejectment and for damages for malicious trespass, the complaint should contain a description of the premises sufficiently definite so that the land may be located (162+1050). Ejectment, ¶64.

Under allegations that defendant negligently ran his automobile at high and dangerous speed, and ran over plaintiff's cow while it was being led back of plaintiff's wagon, evidence

that defendant passed the wagon at great speed in the traveled track in close proximity to the wagon and cow was admissible (162+71). Highways, [§184\(1\)](#).

In an action for conversion, an allegation in the alternative that one or the other of two defendants converted the goods, but which one plaintiff is unable to determine, states no cause of action against either defendant (124-117, 144+450, 51 L. R. A. [N. S.] 640). Pleading, [§20](#).

Where a complaint in an action against an officer seizing intoxicating liquors under § 3172 does not allege that the property was wrongfully taken, the question of a wrongful taking is not in issue (123-333, 143+907). Sheriffs and Constables, [§168\(6\)](#).

A complaint against an administrator for damages for loss of lands of the estate through failure of defendant to pay the taxes thereon held demurrable, where it failed to allege negligence, and where it showed a discharge of the administrator by the probate court (128-3, 150+171). Executors and Administrators, [§443\(1\)](#).

Money had and received—Complaint in action for breach of contracts for sale of lumber held sufficient to warrant a recovery as for money had and received (123-122, 143+253). Sales, [§411, 417](#).

A complaint held to state a cause of action for money had and received (126-220, 148+67, L. R. A. 1915F, 962). Money Received, [§1](#).

Laws of other states—Complaint against Maine corporation need not allege that laws of Maine authorized defendant to make contract sued on (122-380, 142+871). Corporations, [§513\(2\)](#).

Contracts—That a contract was not pleaded was immaterial, where the parties voluntarily litigated the question (126-115, 148+50). Pleading, [§404](#).

Where a complaint alleges the reasonable value of services rendered, and also that defendant agreed to pay a certain sum therefor, and there is no election, plaintiff may prove either the agreed or the reasonable value (124-416, 145+124). Pleading, [§369\(1\)](#).

When one contract is an inducement or part consideration for another, it is not objectionable, in suing on the latter, to plead the pertinent matters of the former (128-490, 151+203). Contracts, [§332\(1\)](#).

In an action to recover a stipulated commission for the sale of land, plaintiff cannot recover for the actual value of his services, in absence of pleading and proof as to such value (128-217, 150+785). Brokers, [§82\(4\)](#).

A complaint held sufficient to support a recovery either on an express or an implied contract (125-458, 147+444). Contracts, [§333\(1\)](#).

Under a complaint declaring on an express contract, plaintiff cannot recover on a quantum meruit (125-179, 146+347, 51 L. R. A. [N. S.] 254, Ann. Cas. 1915C, 882). Contracts, [§346\(12\)](#).

A complaint held to state a cause of action for specific performance of a contract for the sale of land and for the cancellation of security given by the vendee (126-52, 147+827). Cancellation of Instruments, [§37\(1\)](#).

A trial court held to have abused its discretion in requiring plaintiff, in an action for breach of contract, to elect to proceed either for a rescission or to recover damages (126-176, 148+43). Pleading, [§369\(2\)](#).

Complaint for rescission of contract for sale of land for fraud held sufficient (122-295, 142+710). Vendor and Purchaser, [§123](#).

Plaintiff cannot recover for services not alleged, notwithstanding recoupment sought by answer (121-280, 141+179). Contracts, [§346\(1\)](#).

Complaint for breach of warranty held to show that plaintiff accepted the article warranted, though there was an allegation that he did not accept (122-209, 142+193). Sales, [§434](#).

Subd. 3—Where defendant appears, the relief granted is not limited by the prayer, except that greater damages cannot be recovered, without amendment, than stated (124-279, 144+952). Judgment, [§252\(1\)](#).

Interest as an element of damages for fraud in the sale of a horse may be recovered, though not asked for in the complaint (124-265, 144+954). Damages, [§157\(4\)](#).

7754. Demurrer to complaint—Grounds—

In general—Admissions by demurrer (122-380, 142+871). Pleading, [§214\(1\)](#).

Construction of pleadings on demurrer (122-441, 142+822). Pleading, [§216](#).

Failure to allege incorporation and corporate powers of defendant company in a suit on contract, or that plaintiffs were partners, is not ground for demurrer (122-380, 142+871). Corporations, [§513\(2\)](#); Partnership, [§213\(1\)](#).

A complaint which, to any extent and on any reasonable theory, presents facts sufficient to justify a recovery, will be sustained on demurrer, however inartificially the facts may be stated (122-504, 142+899, Ann. Cas. 1914D, 945). Pleading, [§218\(1\)](#).

A judgment for defendant on demurrer to the complaint because the plaintiff mistook his remedy does not reach the merits, and is not a bar to a new action founded upon the proper remedy (161+388). Judgment, [§572\(2\)](#).

Subd. 1. For want of jurisdiction—Involving interstate commerce (121-488, 142+3, 45 L. R. A. [N. S.] 612).

Subd. 5—Where the fact that several causes of action are improperly united appears upon the face of the complaint, the objection must be taken by demurrer or it is waived (132-27, 155+756). Pleading, [§406\(8\)](#).

Subd. 6—Answer in mandamus on relation of city to compel construction of street railroad extension directed by ordinance held to present issue as to reasonableness of ordinance as against general demurrer (122-163, 142+136). Mandamus, ¶165.

Complaint against physician for malpractice held good as against a general demurrer (122-152, 142+143). Physicians and Surgeons, ¶18(4).

Where the complaint shows on its face that plaintiff's cause of action is barred by limitations, the defect may be taken advantage of by demurrer (129-342, 152+734). Limitation of Actions, ¶177(2).

7755. Same—Requisites—Waiver—

Cited (131-375, 155+621).

A joint demurrer will be overruled, if a cause of action is stated against either defendant (128-300, 150+912). Pleading, ¶198.

Where, in a complaint by foreign receivers of a foreign corporation to recover a stock subscription, there was nothing to show that the appointing court acted under its general equity powers, or without statutory authority, or that it exceeded its jurisdiction, a general demurrer did not present any question of jurisdictional defects (122-250, 142+315). Abatement and Revival, ¶83.

The petition and notice of contest of an election under §§ 529 and 599 is governed by the rules of practice applicable to an ordinary complaint, and contestee, desiring to attack the petition on the ground of legal incapacity of contestants, must demur or answer under this section, or he will be deemed to have waived the objection (161+513). Elections, ¶286, 287.

Where improper joinder of causes of action appears on the face of the complaint, it is waived unless taken advantage of by demurrer (132-27, 155+756). Pleading, ¶406(8).

7756. Contents of answer—

In general—Where an answer sets out in full the contract sued on, plaintiff cannot contend that the issue as to whether the contract was entire was not raised by the answer (125-179, 146+347, 51 L. R. A. [N. S.] 254, Ann. Cas. 1915C, 882). Contracts, ¶338(1).

Where the answer admits consideration of the note sued on, an offer by defendant to prove want of consideration is properly denied (128-241, 150+870). Pleading, ¶36(3).

Evidence of contributory negligence is admissible under an answer containing a general denial and a specific allegation "that the damage * * * was caused by the negligence of the said plaintiff and its servant and employé, and not otherwise" (161+390). Negligence, ¶117.

Illegality of a lease as contemplating violation of the liquor laws held not available as a defense in an action thereon, where it neither appeared from the complaint nor was alleged in the answer, and was not litigated by consent (126-417, 148+566). Landlord and Tenant, ¶230(8).

Where defendant did not plead the law of a foreign state, by which the principles of the case were governed, and tried the case on the theory that such law was applicable, he could not complain on appeal that such law was not pleaded (132-205, 156+3). Appeal and Error, ¶171(3).

An answer, pleading that defendant's ancestor was at the time of his death lawfully seized of the premises and that he had good and sufficient title thereto, held sufficient to permit a defense of title by parol gift, accepted and executed (126-389, 148+125). Frauds, Statute of, ¶149.

In an action to foreclose a log lien, an answer expressly denying that any demand had been made on defendant before the filing of the lien, and averring lack of information sufficient to form a belief as to any of the allegations of the complaint, raised the issue as to such demand, and whether the work was completed before the lien was filed (128-5, 150+216). Logs and Logging, ¶33(8).

Personal property having been converted by an attempted foreclosure and sale by the former mortgagee, the amount of a new note cannot be deducted from the damages awarded without pleading and proof of the note (132-364, 157+582). Pleading, ¶139.

Defendant need not plead facts showing that the injury complained of resulted from a cause different from that alleged by plaintiff (131-266, 154+1093). Master and Servant, ¶262(1).

In an action on a contract, there being a denial of the making of the contract, defendant need not plead facts tending to show that the material and labor constituting the subject of the action were furnished without expectation of pay and that the minds of the parties never met in an agreement (127-449, 149+950). Contracts, ¶346(9).

A denial of any consideration will not admit proof of an illegal consideration (135-208, 160+676). Pleading, ¶346(3).

An admission in an answer that defendant executed a bond sued on in the form and manner set out in the complaint carries with it an admission of all that is essential to a valid execution of the bond, the terms contained therein including the full authority of the agents by whom it was executed (123-218, 143+355). Pleading, ¶127(2).

A claim for attorney's fees for the collection of a note is not a part of the cause of action on the note, and a denial in the answer of the value thereof as alleged in the complaint does not raise an issue, preventing the testing of the answer by demurrer as not stating a defense to the note (161+398). Pleading, ¶204(5).

Effect of general denial—Where the complaint in a suit on a note alleges that no part of the note has been paid, a general denial does not raise a material issue upon the question of payment (161+398). Bills and Notes, ¶489(1).

Under a general denial in an action for slander, defendant may show in diminution of dam-

ages that plaintiff's reputation was bad (122-517, 142-897, Ann. Cas. 1914D, 1056). Libel and Slander, ¶100(4).

The issue of noncompliance with § 3858, requiring notice of assignments of wages to be given to the employer, held sufficiently raised by defendant's general denial (125-211, 146-359, Ann. Cas. 1915C, 688). Assignments, ¶132.

Matters provable under general denial in action for slander (122-177, 142-147, 47 L. R. A. [N. S.] 1098, Ann. Cas. 1914D, 894). Libel and Slander, ¶100(1).

A general denial in an action for treble damages for cutting timber puts in issue the question whether the cutting was casual or involuntary, though the answer admitted that some timber was cut by defendant's servants without lawful right; it not appearing from the answer that such cutting was with defendant's knowledge or consent (127-360, 149-461). Treaties, ¶40(4).

Where, in an action for assault and battery, defendant filed a general denial merely, it was not error to refuse to instruct on the subject of justification (124-260, 144-950). Trial, ¶251(8).

Several defendants—Where several defendants answer separately, a defense interposed by one is not available to a codefendant, where his separate answer does not present it (129-324, 152-755). Pleading, ¶84.

Admission of ultimate facts—Defendant, having admitted the ultimate facts pleaded in the complaint, cannot insist that the plaintiff must either plead or prove the subsidiary matters which go to make up such facts (132-238, 156-283). Pleading, ¶376.

Extension of time as releasing surety—A surety on a building bond, claiming a release because of an extension of time granted the contractor, must plead such defense. Such surety, claiming a release on the ground that the owner paid the contractor a sum of money after default, must plead such defense (123-222, 143-715). Principal and Surety, ¶156.

7757. Requisites of a counterclaim—Pleading does not admit—

In general—Pleading recoupment (121-280, 141-179).

Whether a cause of action pleaded is a proper counterclaim in the particular action can only be raised by demurrer (133-306, 153-420). Pleading, ¶195.

Subd. 1—In a suit on a note, transferred by a trustee in bankruptcy, to plaintiff, defendant was entitled to set off damages by a breach of contract of bailment by the bankrupt, where the damage occurred while the property was in the possession of the bailee or his trustee in bankruptcy. (124-54, 144-426). Set-Off and Counterclaim, ¶49(1).

Where the conditional vendee of an automobile was in default, the possession of the automobile by the vendor was not wrongful until he began suit on the purchase money notes, and the court properly limited recovery on the vendee's counterclaim to the time subsequent to the commencement of the action (125-317, 146-1113, L. R. A. 1916A, 912). Sales, ¶479(15); Set-Off and Counterclaim, ¶29(2).

Defendant must plead a set-off, and plaintiff need not prosecute an equitable accounting to ascertain whether defendant is entitled thereto (128-58, 150-227). Contracts, ¶328(1).

Where the complaint seeks an accounting, defendant is entitled to deductions, though he does not plead the same as a set-off or counterclaim (123-307, 150-903). Pleading, ¶139.

In replevin by a chattel mortgagee, defendant cannot set up as a counterclaim a conversion by plaintiff of the property involved in the action after the commencement of the action (133-305, 158-420). Set-Off and Counterclaim, ¶11.

Where plaintiff, a grading contractor, sublet a part of the work to defendant partnership, advanced money to the firm, and took a mortgage on its grading outfit to secure such advances, and on default brought replevin against the firm, defendants were entitled to assert a partnership claim by way of counterclaim, though the mortgage was not given by the firm, but by a member thereof and his wife (133-305, 158-420). Set-Off and Counterclaim, ¶29(1).

Where a landlord forcibly evicted his tenant, who had paid his rent in advance, and brought an action to restrain the tenant from interfering with the property and for damages, a counterclaim for damages for conversion of the tenant's property in the building and for the value of the term covered by his advance payment of rent arose "out of the contract or transaction pleaded in the complaint" or "connected with the subject of the action," and was permissible under this section. (123-447, 143-1128). Set-Off and Counterclaim, ¶29(3).

The provision that a counterclaim is proper when it is "connected with the subject of the action" should receive a liberal construction (126-461, 148-307). Set-Off and Counterclaim, ¶3.

Damages due to plaintiff's quitting defendant's service without cause, in violation of the contract of employment, could be pleaded as a set-off to plaintiff's cause of action for conversion of garden truck (130-50, 152-865). Set-Off and Counterclaim, ¶33(1).

Subd. 2—Where defendant, a tenant whose term expired February 28th, and who had paid his rent to that date, was forcibly evicted by plaintiff, the landlord, on February 10th, and on February 11th plaintiff brought an action against defendant for damages for a forcible re-entry, and to restrain defendant from interfering with plaintiff's possession, a counterclaim interposed by defendant to recover \$500, the value of goods in the building converted by plaintiff, and for \$150 "for the use and occupation" of the premises, stated a cause of action existing in favor of defendant against plaintiff at the commencement of the action. While defendant had no cause of action for use and occupation, defendant being a trespasser, his designation of his claim as for "use and occupation" would be treated as surplusage, and the claim therefor treated as one for damages for the eviction, recoverable at the date of such eviction. A further allegation of defendant's answer that "by reason of the premises defendant has been

damaged in the sum of at least \$650' was sufficient to present a claim for tort accruing before the commencement of the action (123-447, 143+1128). Set-Off and Counterclaim, ¶24.

Where plaintiff, a grading contractor, sublet a part of the work to defendants, advanced money to them, and took a chattel mortgage on their grading outfit, and, on default in the payment of the mortgage, brought replevin, a counterclaim by defendants setting up an oral agreement by plaintiff to pay extra compensation for wet excavation, encountered after the work was undertaken, was permissible under the second subdivision of this section, as another cause of action arising on contract interposed in an action on contract, though such counterclaim was not maintainable under the first subdivision (133-305, 158+420). Set-Off and Counterclaim, ¶29(1).

Where the maker of a note for the price of corporate stock sued to enforce a contract by defendant, the payee, by which the latter agreed to collect the amount of the note from a larger note assigned by plaintiff to defendant as collateral, and for that purpose to renew plaintiff's note, a counterclaim by defendant alleging that the collateral note was worthless and had been fraudulently assigned by plaintiff to defendant, and that plaintiff had wrongfully taken possession of his own note, and praying judgment for the amount thereof, was not based on a tort, but on contract growing out of the transaction, and a demurrer thereto was properly overruled (132-399, 157+640, L. R. A. 1916E, 771). Set-Off and Counterclaim, ¶34(1).

7758. Several defences, etc., how pleaded—Answer and demurrer—

In an action on an accident policy for death resulting from accident, where defendant alleged that the death was caused by suicide, and also that it was caused by the beneficiary, it was proper to deny plaintiff's motion to require defendant to elect on which claim it would rely, since the issue was the question of accident, and the affirmative of the issue was with the plaintiff, and it would have been proper to show either one of such claims under a general denial in disproof of accident, they not being affirmative defenses and not being inconsistent (134-192, 158+967). Pleading, ¶93(2).

7759. Judgment on defendant's default—

Where a complaint stated a cause of action against one of two defendants, a joint demurrer of both defendants was properly overruled (123-159, 143+257, 51 L. R. A. [N. S.] 137). Pleading, ¶198.

7760. Demurrer or reply to answer—

Demurrer to answer—Whether a cause of action pleaded is a proper counterclaim can only be raised by demurrer (133-305, 158+420). Pleading, ¶195.

A claim for attorney's fees for the collection of a note is not a part of the cause of action on the note, and a denial in the answer of the value thereof as alleged in the complaint does not raise an issue which prevents testing by demurrer the sufficiency of the answer as a defense to the note (161+398). Pleading, ¶204(5).

A demurrer to the second defense of an answer in ejectment denying generally the complaint and attempting to plead an oral agreement for a conveyance of the land, taken out of the statute of frauds by part performance, was not bad as being to a part of a defense only (134-321, 159+752). Pleading, ¶204(7).

Reply to answer—A complaint construed as required by § 7769, and held that a reply was unnecessary (122-154, 141+1134; 122-154, 142+134). Pleading, ¶165.

In an action on a benefit certificate, in which the answer set up the expulsion of assured from the order, a reply that the expulsion was arbitrary and void, and constituted a breach of the contract, was responsive to defenses set up in the answer to the effect that after the expulsion deceased failed to pay his assessments, and that proofs of his death were not furnished (127-196, 149+197). Insurance, ¶815(3).

A reply denying that a special administrator was appointed was sufficient to raise the issue that an appointment in fact made was invalid, because no petition for such appointment was filed as required by § 7227 (128-112, 150+385). Executors and Administrators, ¶443(7).

Admissions in reply (129-214, 152+404). Pleading, ¶177.

A reply setting up waiver of the payment of assessments under the beneficiary certificate sued on is not a departure from the complaint (129-214, 152+404). Pleading, ¶180(2).

7761. Failure to reply—Judgment—

An allegation of payment in the answer, to which no reply was interposed, held presumptively litigated by consent (131-249, 154+1072). Appeal and Error, ¶907(1).

7762. Sham and frivolous pleadings—

In general—In an action on a note given in satisfaction of a judgment, and to foreclose a mortgage given to secure such note, an answer setting up newly discovered evidence, and praying that the judgment be vacated and that a new trial be granted, held properly stricken as sham and frivolous (161+257). Pleading, ¶358.

A frivolous reply and a sham reply defined and distinguished, and held that such a reply may be stricken on motion; its falsity being established by affidavit (125-98, 145+787). Pleading, ¶358, 359, 360(1, 3).

Sham pleadings—To warrant striking an answer as sham its falsity must be clearly and indisputably shown. That a pleading is verified does not prevent it from being attacked as sham. An answer setting up failure of plaintiff to comply with §§ 6107-6113 in respect to an interstate transaction held properly stricken as sham (133-240, 158+239). Pleading, ¶360(3).

Frivolous pleadings—To warrant striking an answer as frivolous, the facts pleaded must not in any legal view present a defense (133-240, 158+239). Pleading, ¶358.

Irrelevant pleadings—In action for alienation of wife's affections, allegation of the answer setting out statement of trial court contained in the decree of divorce as to the treatment of his wife by defendant therein, plaintiff here, prior to the action for divorce, was properly stricken (162+448). Pleading, ¶364(1).

7763. Supplemental pleadings—

127-522, 149+131.

Where, after the filing of a counterclaim, plaintiff in replevin dismissed without prejudice to the prosecution of the counterclaim, that part of an amended answer, thereafter filed, setting up an additional "counterclaim" for conversion of the property after the date of the dismissal, cannot be supported as a supplemental answer (133-305, 158+420). Pleading, ¶146.

Where it appears from the supplemental answer in ejectment that plaintiff had taken possession after commencement of the action, but the answer did not demand a dismissal and defendant did not offer to let plaintiff have judgment determining her right of possession, but demanded judgment on the merit refusal to dismiss because of plaintiff's possession was not error (124-538, 144+1090). Ejectment, ¶100.

7764. Interpleader—

Where a party is ordered to interplead and his right to a fund in court depends on the power of the court to relieve him from an accepted bid, he is not entitled to a jury trial (135-115, 160+500). Jury, ¶13(19).

Substitution of party defendant, on deposit in court by the retiring defendant, of the fund in controversy, held not improper (122-187, 142+144). Parties, ¶59(1).

An order of interpleader, made under this section, making appellant a party, and requiring her to present her claim to the fund in the hands of defendant, and restraining appellant from prosecuting an action in another state, held proper (132-167, 156+271). Injunction, ¶33; Interpleader, ¶11.

Where a beneficiary certificate, or the constitution and by-laws of the order, did not provide that the proceeds of the certificate, on the death of the beneficiary named, should be paid to the administrator under G. S. 1913 § 3514, as trustee, a special administrator of the deceased member, the beneficiary having predeceased him, could not be impleaded by the beneficial association, under this section, when sued on the certificate by the heirs of the deceased member (122-221, 142+316). Executors and Administrators, ¶438(1).

7766. Intervention—

The trial court's determination, made on conflicting affidavits, as to the number of folios charged for in making the transcript and two copies of the testimony, made necessary on account of the intervention, cannot be disturbed (127-212, 149+295). Appeal and Error, ¶1024(5).

Where a bank intervened in an action on a note, claiming that it held the note as collateral security, whereupon plaintiff withdrew from the case, and thereafter the complaint in intervention was withdrawn, intervenor was liable for statutory costs on dismissal of the action on defendant's motion (131-193, 154+953). Costs, ¶98.

Where an intervenor, claiming a lien on property for the negligent loss of which the action is brought, reiterates the allegations of the complaint in the action, and becomes practically a coplaintiff, he is liable, under this section, jointly with the plaintiff for costs, upon the setting aside of separate verdicts in their favor, including the expense of a transcript and two copies of the testimony (127-212, 149+295). Costs, ¶98.

7769. Pleadings liberally construed—

Under this section, a complaint construed, and held a reply was not necessary (122-154, 141+1134; 122-154, 142+134). Pleading, ¶165.

Construction against admission of fact (122-118, 142+10). Pleading, ¶177.

7770. Irrelevant, redundant, and indefinite pleadings—

Allegations of perjury and fraudulent practices in obtaining a judgment without statement of facts constituting the fraud are mere conclusions and irrelevant (126-414, 148+455). Pleading, ¶8(1).

Allegations in an action to set aside a judgment held properly stricken as redundant or irrelevant (126-414, 148+455). Pleading, ¶364(2, 3).

An order requiring a complaint to be made more definite and certain rests in the discretion of the trial court, and will not be reversed unless the discretion is abused (126-414, 148+455). Appeal and Error, ¶960(2).

Where a general allegation of permanent injury is deemed insufficient, the proper practice is to move the court for more specific allegations (124-260, 144+950). Pleading, ¶367(4).

7771. Averments, when deemed admitted—

An answer held not to admit a cause of action alleged in a complaint (126-494, 148+299). Insurance, ¶815(2).

A defendant, who omits to plead and prove a partial payment of an account, is concluded by the judgment and cannot maintain an action to recover such payment (123-389, 143+910). Judgment, ¶619.

A reply averring that insured paid all the monthly assessments which defendant permitted him to pay, and that since a date specified defendant refused to accept payments of assessments or to recognize insured as a member of defendant beneficial order, admitted the allegations of the answer that no monthly assessments were in fact paid subsequent to the time stated (134-302, 159+624). Pleading, ¶177.

7773. Ordinances and local statutes—

In a criminal prosecution for violation of a village ordinance, the complaint is sufficient if it refers to the ordinance by number, chapter, or section, and it is not necessary to introduce the ordinance in evidence (124-498, 145+383, 51 L. R. A. [N. S.] 40, Ann. Cas. 1915B, 812). Criminal Law, ¶304(12).

7774. Incorporation, pleading and proof—

135-126, 160+258.

Where fact of incorporation is material, denial on information and belief or general denial does not raise an issue. Allegation of incorporation, where immaterial to the issues, need not be proved (128-73, 150+226). Corporations, ¶514(1), 518(2).

In an action against a corporation the complaint need not allege defendant's corporate existence, and a denial thereof in the answer is unavailing when it is refuted by the verification and evidence brought out by defendant itself (124-317, 145+37). Corporations, ¶514(2), 518(2).

Failure to allege corporate character and powers of defendant company is not ground for demurrer (122-380, 142+871). Corporations, ¶513(1).

7775. Copartnerships—Proof as to members—

Failure to allege that plaintiffs are partners is not ground of demurrer (122-380, 142+871). Partnership, ¶213(1).

7777. Items of account, how pleaded—

Where the complaint in an action for board and lodging sets out the dates between which the same was furnished, the number of meals and the number of lodgings, and the value of each, the failure of plaintiff to furnish a bill of particulars on defendant's demand is not presumptively prejudicial, where the demand does not indicate what information is desired beyond what is contained in the complaint (132-8, 155+617). Appeal and Error, ¶1039(10).

Under this section evidence will not be excluded because a bill of particulars is verified by counsel, instead of the party; it having been returned with only a general objection, and the defect, if any, being subject to remedy (130-196, 153+310). Pleading, ¶422.

7778. Pleadings in slander and libel—

In general—A complaint construed to present two separate causes of action, so that plaintiff could recover on either of them, in absence of a request to compel an election (125-122, 145+808). Pleading, ¶369.

Where a single injury is suffered in consequence of the wrongful acts of several persons, all of whom contribute directly to cause the injury, though there was no conspiracy or joint concert of action between them, are jointly and severally liable (131-375, 155+621). Torts, ¶22.

Pleading mitigating circumstances—If defendant plead the truth of the charge, or of a part thereof, and fail in his proof, this may be considered by the jury in aggravation of damages; but, if the plea was interposed in good faith, it may be considered by the jury on the issue of malice, and in mitigation of exemplary damages (122-517, 142+897, Ann. Cas. 1914D, 1056). Libel and Slander, ¶57.

Bad reputation of plaintiff and absence of malice are provable under a general denial, where the complaint states a case for the recovery of punitive damages (122-177, 142+147, 47 L. R. A. [N. S.] 1098, Ann. Cas. 1914D, 894). Libel and Slander, ¶100(1).

Under a general denial in an action for slander defendant may show, in diminution of damages, that plaintiff's reputation was bad (122-517, 142+897, Ann. Cas. 1914D, 1056). Libel and Slander, ¶100(4).

Justification—In order to justify, defendant must plead specific facts showing the truth of the charge (122-517, 142+897, Ann. Cas. 1914D, 1056). Libel and Slander, ¶100(3).

What need not be pleaded—Plaintiff, suing for slanderous words imputing unchastity, need not allege that her character was good, that being presumed (122-517, 142+897, Ann. Cas. 1914D, 1056). Libel and Slander, ¶100(6), 101(1).

Where spoken words are slanderous per se, the complaint need not allege special damages (128-10, 147+668). Libel and Slander, ¶89(1).

7780. Joinder of causes of action—

In general—Different items of damages do not constitute separate causes of action (121-296, 141+181, 45 L. R. A. [N. S.] 205, Ann. Cas. 1914C, 720). Action, ¶53(1).

Refusal to require plaintiff to elect between different causes of action which in fact were tried as one was without prejudice to defendant (127-490, 150+218). Appeal and Error, ¶1039(9).

Where misjoinder of causes of action appears on the face of the complaint, objection thereto must be taken by demurrer, or the defect is waived (132-27, 155+756). Pleading, ¶406(8).

Subd. 1—Cited (134-461, 159+1081).

Causes of action for concurrent negligence of two defendants may be joined, where the facts concerning each are identical as to time, place, and result (124-531, 144+474). Parties, ¶27.

Two causes of action for malicious prosecution held to arise out of transactions connected with the subject of action, and to each affect all the parties to the action, and therefore to be properly united in one complaint (130-229, 153+532, Ann. Cas. 1916C, 267). Action, ¶43(2), 50(6).

Subd. 2—Complaint alleging that three defendants contracted to pay a debt of plaintiff to a third party, and that one of the defendants had previously contracted to make such payment, and had failed to do so, does not improperly unite two causes of action (122-380, 142+871). Action, ¶38.

Election between express contract and quantum meruit not required (121-352, 141+481). Pleading, ¶369(2).

Subd. 3—Negligence at common law may be joined with charge of negligence in failing to comply with statute (121-461, 141+518). Master and Servant, ¶313.

A complaint against two defendants, alleging that their concurrent negligence caused an injury to plaintiff, is good as against a demurrer for misjoinder, though the liability of one defendant rests on the federal employers' liability act and the other on the common law (134-461, 159+1081). Action, ¶45(3).

7782. Amendments of course, and after demurrer—

The right to amend a pleading after a demurrer thereto has been determined is vested in the discretion of the trial court, which discretion will not be disturbed, unless abused (129-342, 152+734). Pleading, ¶225(2).

7783. Amendment by order—

130-151, 153+316.

Cited (132-389, 157+642).

In general—Consent to amendment permitted by the court (see 130-342, 153+745).

A proposed amendment to an answer held improperly disallowed (126-494, 148+299). Pleading, ¶256.

Application of statute—Amendment of findings (121-285, 141+186). Trial, ¶400(1).

While a summons is not strictly process, and is not in terms specified in this section, it is one of the documents in the action, which in virtue of this section and § 7786 may be amended in the sound discretion of the court; and where a summons, intended for and actually served on a father, contained the initials of his son, instead of the given name of the father, the court had power, on proper notice, to amend the summons by striking out initials of the son, and inserting in lieu thereof the correct name of the father (131-173, 154+952). Process, ¶163.

Amendment on the trial—Amendment of pleadings at the trial is largely within the discretion of the trial court (131-10, 154+508). Pleading, ¶236(3).

Amendment after judgment—There was no abuse of discretion in refusing defendant leave, after the case was tried and decided, to amend his answer so as to plead mistake and ask for a reformation of the contract involved in the suit (131-159, 154+951). Pleading, ¶236(4).

Amendment of parties—Misnomer of corporation defendant, by adding to its corporate name the words "Relief Department," held amendable as of course, and motion at trial to vacate service of summons on ground that same was not made on defendant was properly overruled (133-434, 158+711). Parties, ¶95(5).

7784. Variance—Amendment—Exceptions—

Proof must follow pleadings—Plaintiff must proceed on a definite theory, and no change of attitude, prejudicial to defendant, can be allowed (122-59, 141+1105). Pleading, ¶18, 387.

Immaterial variance—An objection that the complaint was not specific enough to allow proof of so-called "short rates" was properly overruled, where a bill of particulars had been furnished fully disclosing these rates, so that defendant could not have been misled (133-316, 158+424). Contracts, ¶346(3).

Where a complaint declares on a quantum meruit for the reasonable value of services, and the evidence discloses that defendant agreed to pay a specified price, a recovery of the agreed price is proper, where it does not appear that defendant was misled to his prejudice (128-304, 150+901). Pleading, ¶398.

A variance between the pleadings and proof held not of a nature to mislead the defendant (135-175, 160+771). Municipal Corporations, ¶671(4).

Substantial performance provable under general allegation of performance (121-280, 141+179). Contracts, ¶346(8).

In an action for death of a boy at a railroad crossing, held that there was not a fatal variance between the pleadings and the proof (125-137, 145+304). Railroads, ¶345(4).

Variance as to places and dates of making fraudulent representations inducing contract for sale of land held immaterial (122-295, 142+710). Vendor and Purchaser, ¶123.

In an action under the federal employers' liability act, held that there was no fatal variance between the allegations and proof (128-112, 150+385). Master and Servant, ¶264(10).

That each allegation of fact in a negligence case was not proved did not show a variance (128-112, 150+385). Negligence, ¶119(7).

7785. Failure of proof—

128-332, 150+1088.

It is not essential that every averment of negligence be proved as alleged (128-112, 150+385). Negligence, ¶119(1).

Where the creation of a corporation is not a material issue, it need not be proven, though alleged (128-73, 150+226). Corporations, ¶514(1), 518(2).

7786. Extensions of time—Relief against mistakes, etc.—

In general—The defendant to whom a copy of the summons is delivered in person within the state is not personally served within this section, the service being merely an equivalent of summons by publication (122-396, 142+714, Ann. Cas. 1916B, 563). Judgment, ¶142.

A judgment entered against defendant without his knowledge, after the claim sued on was extinguished by defendant's discharge in bankruptcy, held properly set aside under this section as having been taken through mistake, inadvertence, surprise, or excusable neglect (126-184, 148+57, L. R. A. 1916F, 837). Judgment, ¶143(3).

Default for want of a reply may be opened, though the complaint fails to allege the giving of notice to defendant city, as required by § 1786 (122-154, 141+1134; 122-154, 142+134). Judgment, ¶145(1).

Opening a judgment and permitting defendant to interpose an amended answer presenting a defense which had been abandoned at the trial held not an abuse of discretion (134-307, 159+626). Judgment, ¶364.

An affidavit by an attorney, based upon knowledge acquired from investigation of the affairs of a corporation, held sufficient to sustain an order opening a default judgment; an affidavit by all the officers and directors showing ignorance of the entry of the judgment not being necessary (127-435, 149+671). Judgment, ¶159.

Overruling of objection that motion was renewal of former motion amounted to a grant of leave to present the motion (122-154, 141+1134; 122-154, 142+134). Motions, ¶45.

An order of the trial court refusing to relieve defendant from its failure to appear at the time set for trial held not an abuse of discretion (128-311, 150+907). New Trial, ¶85.

In making the motion for new trial after entry of judgment, it is not necessary to make a formal motion to set aside the judgment, as the order granting the new trial will in effect vacate the judgment (125-475, 147+654). New Trial, ¶124(1).

Where a party is served with a short notice of an interlocutory motion, he should apply to the court to vacate the service or be relieved from default in order to raise the question on appeal (125-475, 147+654). Appeal and Error, ¶189(1).

Where a motion to open a default judgment failed to urge the objection that the judgment was in excess of the relief prayed in the complaint, and that the complaint was fatally defective in its statement of one cause of action, such objections cannot be considered for the first time on appeal (123-531, 143+1123). Appeal and Error, ¶193(9), 223.

Mandamus will not lie to require the trial court to allow and settle a case after expiration of the time allowed therefor, where the denial of the relief is not shown to be an abuse of discretion (124-537, 144+755). Appeal and Error, ¶571.

Application—The district court has jurisdiction, upon proper notice, to vacate an order of dismissal and reinstate the case (134-261, 159+272). Dismissal and Nonsuit, ¶81(2).

The trial court may vacate a judgment rendered for default in filing a reply, and grant leave to plaintiff to reply (122-154, 141+1134; 122-154, 142+134). Judgment, ¶139, 143(12).

An action cannot be maintained to set aside a judgment for perjury, where the issues were so definite that each party must have known what the other intended to prove (126-154, 147+959). Judgment, ¶444.

Judgment perpetually enjoining railroad from occupying street, because right had not been regularly acquired, should be vacated, when right is acquired by proper franchise and condemnation proceedings. Court may, in its discretion, modify perpetual injunction against railroad from occupying city street before the condemnation proceeding in which it acquires such right is complete (162+523). Injunction, ¶210.

Where a receiver, without notice to defendant or the creditors, secured an order authorizing a settlement whereby the receiver recognized title of a third person to certain property of the estate, and thereafter the receiver, by direction of the court, brought an action to test the validity of the settlement, which action was removed by defendant to the federal court, where defendant interposed a plea of former adjudication, the state court, which made such order of authorization, had power to entertain a motion to set aside the same; such action of the state court not being an interference with the jurisdiction of the federal court (135-286, 160-781). Receivers, ¶78.

A summons is not strictly a process, and is not in terms specified in this section and § 7783, but it is a document in the action, which may be amended in the sound discretion of the court; and where a summons, intended for and actually served upon a father, mistakenly gave the initials of a son, the court had power, on proper notice, to amend the same by inserting therein the true name of the father (131-173, 154+952). Process, ¶163.

Amendment of judgment on appeal in condemnation proceedings (see 128-321, 150+906). Eminent Domain, ¶241.

This section does not empower the court in a judicial ditch proceeding to enlarge the time fixed by statute for demanding a review by a jury of the order of the court fixing the benefits and damages (131-372, 155+626). Drains, ¶82(1).

The exception in this section of final judgments in divorce actions is not an inhibition against correcting a decree as to alimony, but only against modifying or vacating the part of such decree which deals with the marriage status. A correction of a decree of divorce, so as to more accurately express the decision of the court in respect to the alimony awarded, may be made at any time, where neither party nor any third person has, between the entry of the decree and its correction, changed positions, so as to be prejudiced by the correction (133-86, 157+999). Divorce, ¶245(1).

This section applies and permits the opening of a judgment awarding compensation under the workmen's compensation act (134-189, 158+825). Master and Servant, ¶411.

Supplying omissions in the findings—The court may, even after judgment, supply an omission in the findings (134-468, 158+787). Trial, ¶400(1).

Meritorious defense necessary—Affidavit of merits is essential upon application to vacate default judgment and for leave to answer (162+518). Judgment, ¶158.

Who may apply to vacate—Though a dismissal terminates the action, if the dismissal is obtained by fraud and collusion, the court has jurisdiction to vacate the order and reinstate the cause on the motion of a party or stranger having an interest in the subject-matter (122-355, 142+818, Ann. Cas. 1914D, 830). Dismissal and Nonsuit, ¶43(2).

Discretion—Opening a default judgment rests in the discretion of the trial court, and its action in that respect will not be reversed, except for palpable abuse of discretion (127-435, 149+671; 129-316, 152+721; 129-414, 152+772; 131-488, 154+659; 162+518). Appeal and Error, ¶957(1); Judgment, ¶139.

The right to be relieved from a default is not absolute, but rests largely in the discretion of the trial court, and where inexcusable neglect of counsel appears, and there is a question as to diligence and the merits of the defense, the action of the trial court in denying a motion to reopen the case will not be reversed as an abuse of discretion (134-328, 159+752). Judgment, ¶139, 143(10).

Where the affidavits were sufficient to sustain a finding, either that an answer was served in time, or that, if not served in time, the default was due to inadvertence and excusable neglect of defendant, an order opening default judgment will not be disturbed on appeal (133-116, 157+1076). Judgment, ¶162(4).

Power of court commissioner—A court commissioner is without power to vacate a judgment rendered by the district court (131-129, 154+748). Court Commissioners, ¶4.

Mistake—Where plaintiff had judgment by default due to misunderstanding by defendants' attorney as to defendants' interest in the land in question, and defendants showed a meritorious defense, the order vacating the judgment was within the court's discretion (162+352). Judgment, ¶143(4).

That defendant in a damage suit, when the papers were served on him in prison, believed they were papers concerning the criminal case, and therefore did not read them, did not make it an abuse of discretion to refuse to open a default judgment (130-45, 152+865). Judgment, ¶143(6).

That attorney assumed, on account of similarity of heading of summons and complaint, that client's case was in same court in which he had other cases, would not excuse default; the summons and complaint being in his possession (162+518). Judgment, ¶143(10).

Time of application—Diligence—From the time defendant, served by publication, has knowledge of the commencement of the suit, he must proceed with diligence to make his defense (122-396, 142+714, Ann. Cas. 1916B, 563). Judgment, ¶142.

Illness which does not incapacitate defendant from understanding his rights or giving directions as to litigation is not a good excuse for long delay in moving to vacate a judgment entered by default. So held in a case where defendant waited nine months after being informed by an attorney of the steps necessary to be taken to open the default (132-354, 157+586). Judgment, ¶153(1, 3).

Unexplained delay for nearly two years is laches, warranting denial of motion (122-43, 141+806). Judgment, ¶386(2).

Where plaintiff's counsel, through inadvertence and mistake, failed to file a reply for about two months after it was due, the granting of leave to file same out of time was not an abuse of discretion (131-489, 154+789). Pleading, ¶172.

After affirmance of a judgment on appeal without a motion for new trial, and after the lapse of six months from notice of the rendition of the judgment, a motion for a new trial, on the grounds of insufficiency of the evidence and errors occurring at the trial, will not be entertained (134-292, 159+623). New Trial, ¶4.

A party may make a motion for a new trial after entry of judgment, if without fault on his part he has had no reasonable opportunity to make the motion before judgment, and if he uses reasonable diligence in doing so afterwards. The question of diligence is in the sound discretion of the trial court (125-475, 147+654). New Trial, ¶4, 116(3), 124(1).

Where a receiver, without notice to the defendant or the creditors, obtained an order approving a settlement made by the receiver with a third person, recognizing title of the latter to certain property of the estate, the court had power, three years after the entry of such order, to vacate the same under this section, as limitation of the right of appeal did not run against defendant and the creditors, and the receiver, by reason of his consent, did not have the right to appeal, and the doctrine of estoppel or laches did not apply as against the persons directly involved (135-286, 160+781). Receivers, ¶78.

Excusable neglect—Excuse offered by defendant for failure to appear at the trial held insufficient to justify vacating the judgment (133-63, 157+903). Judgment, ¶138(2).

Discretion of trial court in opening a default on the ground of negligence of defendant's attorney held not so clearly abused as to warrant reversal (122-187, 142+144). Judgment, ¶143(12).

Though complaint was defective, where affidavits offered on motion to open default and permit plaintiff to reply showed a meritorious cause of action, and that plaintiff's attorney was unfamiliar with practice and negligent, motion was properly granted in the discretion of the court (122-154, 141+1134; 122-154, 142+134). Judgment, ¶143(12, 16).

Good cause—The court may in its discretion open a default judgment obtained against a corporation because of bad faith or intentional neglect of the officer charged with the duty of making defense (127-435, 149+671). Judgment, ¶143(1).

Where an attorney, from ignorance of facts or from bad faith, stipulates for judgment against a client who has a good defense, the court may, in its discretion, open the judgment and permit the defense to be interposed, if no substantial prejudice will result to the opposing party from the delay (127-435, 149+671). Appeal and Error, §957(1); Judgment, §90, 143(10, 11, 12, 13), 158, 159.

It was not an abuse of discretion to permit defendant to answer after entry of default, where she showed a meritorious defense, and had relied on her husband to take proper steps to protect her, and he failed to do so through a mistaken belief that no judgment could be entered against her after judgment obtained against him, and no prejudice would result to plaintiff (124-535, 144+743). Judgment, §143(3, 16).

Where defendant, on being served personally with summons, wrote to plaintiff's attorney, denying liability, and the attorney answered the letter, asking for certain information, which was given, a default thereafter entered would be opened, if defendant showed a meritorious defense (124-530, 144+1134). Judgment, §145(2).

That plaintiff and the court overlooked the fact that a new action would be barred by a contract limitation is "good cause" for setting aside a judgment of dismissal entered upon stipulation of plaintiff's counsel (131-246, 154+1099). Dismissal and Nonsuit, §43(4).

Where defendant, when the calendar was called, announced that he was bringing a witness from Canada, and would insist on a trial at the day set, reinstatement of the case after dismissal on plaintiff's failure to appear, will be made on condition that plaintiff pay the expense incurred in respect to such witness (135-471, 160+1032). Dismissal and Nonsuit, §81(8).

7789. Unimportant defects disregarded—

161+515.

Admission of evidence—Harmless error—Error in ruling on testimony, which is cured by amendment of the complaint, held not reversible error (124-49, 144+415). Appeal and Error, §1052(1).

Admission of expert testimony, based on incompetent testimony of plaintiff as to his physical condition, was not prejudicial, where plaintiff's wife testified to facts which would have supported the opinion of the expert (130-434, 152+262; 180-434, 153+736). Appeal and Error, §1050(1).

Under this section the erroneous admission of evidence as to complaints of pain by plaintiff after her injury to her husband was not ground for reversal, the testimony being vague and of little consequence (131-448, 155+627). Appeal and Error, §1050(1).

Erroneous rulings admitting incompetent or immaterial evidence constitute reversible error only where clearly prejudicial (128-277, 150+914; 124-437, 145+120; 125-317, 146+1113, L. R. A. 1916A, 912; 125-390, 147+281; 132-81, 155+1042). Appeal and Error, §1050(1).

Error in admitting evidence of a fact shown by other unchallenged testimony is not ground for reversal (128-198, 150+800; 124-288, 144+965; 128-17, 150+213, L. R. A. 1916C, 1214, Ann. Cas. 1916D, 1101; 128-64, 150+223; 129-126, 151+907, Ann. Cas. 1916E, 760). Appeal and Error, §1051(2).

In an action to recover a commission for the sale of land, an erroneous admission of evidence as to efforts made to sell the land was not made prejudicial, where it conclusively appeared that plaintiff found a purchaser (126-115, 148+50). Appeal and Error, §1052(6).

Erroneous admission of evidence not within the issues was not ground for reversal, where the court ignored the evidence in its instructions, and held that its admission was not prejudicial on the motion for new trial (122-209, 142+193). Appeal and Error, §1053(5).

In a case tried to the court, the admission of immaterial evidence which furnishes no basis for any findings made is not prejudicial error (161+213). Appeal and Error, §1054(3).

The reception of objectionable testimony is not ground for reversal, where the court instructs the jury to disregard such evidence (125-353, 147+244). Appeal and Error, §1053(3).

In an action for deceit in the sale of an interest in a corporation, the fraud alleged consisting in representations as to the financial condition of the company, admission of evidence as to the condition of the company four months after the representations were made, and as to acts of one of the defendants not connected with the fraud alleged, was prejudicial error (123-185, 143+718). Fraud, §25, 55.

Exclusion of evidence—Harmless error—Where a party is afforded an opportunity to cross-examine a witness at the trial, it is immaterial error that he was denied the right of cross-examination under § 8377 (131-152, 154+954). Appeal and Error, §1048(6).

Error in excluding evidence is harmless, where the complaining party otherwise obtained the benefit of the excluded testimony (125-102, 145+791). Appeal and Error, §1058(1).

It was not prejudicial error to sustain objections to questions calling for declarations of the deceased to the effect that he intended not to pay assessments in the future (124-431, 145-118). Appeal and Error, §1056(1).

Erroneous exclusion of evidence which, if admitted, could not have changed the result, is not ground for reversal (128-30, 150+229, L. R. A. 1916D, 739). Appeal and Error, §1056(6).

The improper rejection of evidence when first offered is not reversible, where such evidence is later received; and the reception of evidence which is a mere repetition of evidence already received without objection is not reversible error (129-417, 152+833). Appeal and Error, §1050(1), 1058(1).

Error in excluding proper questions asked a witness is not ground for reversal, where the witness subsequently testified fully as to the matters excluded (131-482, 155+758). Appeal and Error, [1058\(2\)](#).

Error in excluding evidence as to defendant's good faith in an action for slander was harmless, where recovery was limited by the charge to compensatory damages (122-177, 142+147, 47 L. R. A. [N. S.] 1098, Ann. Cas. 1914D, 894). Appeal and Error, [1059](#).

Where the uncontradicted evidence shows a certain fact, the exclusion of evidence to establish such fact is not ground for reversal (126-430, 148+309). Appeal and Error, [1057\(1\)](#).

In replevin for an adding machine, the exclusion of plaintiff's testimony amounting to nothing more than legal conclusions was not prejudicial (162+1059). Evidence, [471\(2, 29\)](#).

Rejection of plaintiff's proffer of conversations had with defendant and his wife after maturity of the note in suit, involving admission of liability and tending to contradict and discredit their testimony, held prejudicial error (124-386, 145+116, Ann. Cas. 1915B, 734). Evidence, [200](#).

Exclusion of evidence, in action against carrier for injury to goods carried held prejudicial error (124-357, 145+115). Carriers, [133](#).

Variance—Where a complaint in an action on a beneficiary certificate alleged an absolute obligation to pay a certain sum on the death of the member, the fact that the certificate offered in evidence contained some conditions was not a fatal variance, in view of this section; defendant not having been misled (130-329, 153+742). Appeal and Error, [1039\(13\)](#).

Instructions held not ground for reversal—Error in instructions as to matters not in issue is not ground for reversal (122-130, 141+1118; 121-388, 141+488; 123-109, 143+121; 128-129, 150+818). Appeal and Error, [215\(3\)](#), 1066.

Where the evidence conclusively shows that a heating plant complied with a contract of sale, error in instructions as to the proper measure of damages for nonperformance was not ground for reversal (126-338, 148+281). Appeal and Error, [1068\(1\)](#).

An erroneous instruction as to negligence of an engineer is not prejudicial, where the jury finds that the engineer was not negligent (127-1, 148+446). Appeal and Error, [1068\(1\)](#).

Erroneous instruction, not affecting the result, held not ground for reversal (161+413). Appeal and Error, [1068\(4\)](#).

Failure of the court to mark requested instructions as given or refused is not reversible error, where counsel does not call the court's attention thereto until after final argument has been completed (125-431, 147+434). Appeal and Error, [230](#).

In action against town for injuries to plaintiff riding in buggy when he turned out of center track of road, as he claimed, to avoid barrier and because highway commissioner motioned to him, instruction held harmless to plaintiff (162+332). Appeal and Error, [1064\(1\)](#).

Where verbal inaccuracies or incompleteness of statement occur in a charge which might have been rectified by a request for a more complete charge the judgment will not be reversed, the error being without prejudice (131-482, 155+758). Appeal and Error, [1064\(4\)](#).

Instruction favorable to party complaining is not ground for reversal (122-209, 142+193). Appeal and Error, [1033\(5\)](#).

When charge, taken as a whole, is correct, there will be no reversal for isolated erroneous statements which could not mislead the jury (121-473, 141+843). Trial, [295](#).

Error in instructions as to the measure of damages held not prejudicial (132-265, 156+121). Appeal and Error, [1068\(4\)](#).

Omission in instructions covered by answer to interrogatories. Error in instructions where verdict is correct (121-258, 141+164, L. R. A. 1915D, 644). Appeal and Error, [1068\(1\)](#).

Instructions, effect of cross-examination of adverse party (122-20, 141+810).

Technical errors in instruction held not ground for reversal (122-827, 142+706, 46 L. R. A. [N. S.] 606, Ann. Cas. 1914D, 922).

A charge upon comparative negligence under the federal act held technically erroneous, but not prejudicial (124-503, 145+381). Appeal and Error, [640](#).

Instructions held ground for reversal—Failure of court in drainage appeal to inform the jury that they should not consider the amount awarded by the viewers held prejudicial error (122-392, 142+802). Drains, [36\(4\)](#).

An instruction authorizing recovery of punitive damages in an action for breach of marriage promise, in which such damages was not sought in the complaint, is not harmless error (123-498, 144+213, 49 L. R. A. [N. S.] 757, Ann. Cas. 1915A, 295). Appeal and Error, [1066](#).

Where in an action on a note, in which the issues of fraud in procuring the note and that plaintiff was not a bona fide purchaser, were submitted to the jury, it cannot be presumed, in favor of a verdict for plaintiff, that the jury found for plaintiff on the issue of fraud, so as to render harmless error in the instructions on the issue of bona fide purchase (127-291, 149+467). Appeal and Error, [1031\(1\)](#).

Error in an instruction in action for obstruction of flow of water by boom company held prejudicial (127-490, 150+218). Appeal and Error, [1064\(1\)](#).

Reversal where damages are nominal—A verdict for \$1.31, being for a nominal sum, will not be reversed under the maxim "de minimis" (133-423, 158+705). Appeal and Error, [1171\(2\)](#).

An order sustaining a demurrer to a complaint, where otherwise proper, will not be reversed merely because plaintiff might have recovered nominal damages (129-11, 151+407). Appeal and Error, \S 1171(6).

A judgment dismissing the action will not be reversed and a new trial granted merely to give plaintiff nominal damages (134-209, 158+979).

Misconduct, argument and remarks of counsel—Misconduct of attorney in argument held not ground for reversal, in view of court's instruction to jury (128-245, 150+804). New Trial, \S 32.

Alleged improper remarks by counsel in argument held not prejudicial error (127-15, 148+476). Trial, \S 133(6).

Remarks of counsel and certain conduct of his during the trial held not sufficient to require a reversal (126-168, 148+61). Appeal and Error, \S 1060(1).

The act of counsel in argument in reading instructions which were later given by the court, and the announcement by the court that certain instructions given were requested by one of the parties, held not prejudicial error (134-392, 159+955). Appeal and Error, \S 1060(1).

Act of attorney, while examining jurors, in calling defendant to the stand and asking him if a certain company was interested in the defense, though error, held not prejudicial (132-128, 155+1077, *u. R. A.* 1916D, 644). Appeal and Error, \S 1057(1).

Intimation by plaintiff's counsel, in a suit for damages resulting from negligence, that defendant carried insurance, was not prejudicial error, where defendant's attorney vigorously denied that insurance was carried, and challenged plaintiff to show it by evidence (134-378, 159+832). Trial, \S 108½.

Improper remarks by court—Remark of judge that conduct of defendant's counsel was contemptible, and not fair or right, held not so obviously prejudicial as to demand a new trial (122-343, 142+816). Appeal and Error, \S 1060(1).

Misconduct of jury—The determination of the trial court that certain misconduct of the jury was not prejudicial will not be disturbed on appeal, where the record does not contain the evidence upon which such ruling was based (126-90, 147+716). Appeal and Error, \S 716, 1015(5).

Misconduct of jury in examining place of accident without knowledge of the court and the parties held not ground for reversal (126-48, 147+716). New Trial, \S 56.

Amendment of pleadings—Error in permitting amendment of answer after the evidence was submitted was not prejudicial, where the evidence was admissible under the original answer (128-498, 151+201). Appeal and Error, \S 1041(3).

Error in refusing to permit a defendant to amend his answer is not ground for reversal, where the evidence which could have been received under the answer as amended was introduced and submitted to the jury (127-15, 148+476). Appeal and Error, \S 1041(3).

Failure to furnish bill of particulars—Failure of plaintiff to comply with defendant's demand for a bill of particulars in an action on an account was not presumptively prejudicial error, where the demand for information did not indicate what facts were desired beyond what was alleged in the complaint, which was full and specific (132-8, 155+617). Appeal and Error, \S 1039(10).

Excessive damages as showing prejudice of jury—Defendant, against whom a verdict for \$5,750 for a tort was rendered, cannot complain because the court reduced the verdict to \$2,500; the action of the court not necessarily showing that the jury were so prejudiced that they could not have impartially determined the question of liability (122-343, 142+816). Appeal and Error, \S 1004(3).

Ascribing wrong reason for a ruling—Where a decision is correct on the merits, it is immaterial that the court ascribes a wrong reason for its ruling (126-154, 147+959). Appeal and Error, \S 854(2).

Limitation of peremptory challenges—Limiting peremptory challenges to three for both defendants held not ground for reversal, where it did not appear that each defendant was not in fact allowed three challenges, and that jurors remained whom defendants desired to exclude (124-204, 144+938). Appeal and Error, \S 1045(1).

Omission of material findings—A judgment will be affirmed, though a material finding is wanting, when it clearly appears that its omission was an oversight, and the evidence is conclusive as to what it should be (134-468, 158+787). Appeal and Error, \S 1071(6).

Erroneous submission of case to jury—Failure to submit a case to the jury as required by this section, where it clearly appears that such submission could not have changed the result, is error without prejudice (130-111, 153+259). Appeal and Error, \S 1061(4).

Amendment of findings—Refusal to amend findings held not prejudicial error (121-395, 141+518, *Ann. Cas.* 1914D, 160). Appeal and Error, \S 1071(1).

Defective designation of parties in complaint—The designation of plaintiff, suing as guardian, as "R., as guardian," instead of "B., an incompetent person, by R., her guardian," though improper, is a technical error, curable by amendment, and not ground for reversal (123-360, 143+973). Appeal and Error, \S 1036(1).

Injunction—No abuse of discretion held shown in the granting of a temporary injunction against breach of a restrictive building covenant (126-334, 148+286). Injunction, \S 62(3).

ISSUES AND TRIAL

7790. Terms defined—

Meaning of word "trial" (see 135-307, 160+778).

7792. Issues, how tried—Right to jury trial—

In general—This section does not enlarge the constitutional right of trial by jury, but merely recognizes that right (130-252, 153+527). Jury, ¶10.

Negligence of railroad company in running train at crossing (125-137, 145+804). Railroads, ¶350(6).

The court may in a proper case submit a cause to the jury on narrower ground of liability than that claimed in the complaint (131-448, 155+627). Trial, ¶203(2).

Negligence and contributory negligence in action for injuries to servant (128-146, 150+394).

Nature of action—An action at law for money damages only for fraudulent representations inducing plaintiff to enter into a contract was triable by jury under this section (162+1049). Jury, ¶13(7).

Where a party is ordered to interplead and his right to a fund in court depends on the power of the court to relieve him from an accepted bid, he is not entitled to a jury trial (135-115, 160+500). Jury, ¶13(19).

Issues of law in mandamus are not triable by jury (132-36, 155+1048). Jury, ¶19(3).

Where one defendant held title to land impressed with a trust in favor of plaintiff, and conveyed to a codefendant, who had notice of plaintiff's rights, and such codefendant conveyed to a third person having like notice, held that plaintiff had no cause of action at law against the defendants for damages and was not entitled to a trial by jury (133-452, 158+707). Jury, ¶14(5).

The court, in an equitable action, may withdraw from the jury issues submitted to them, or may direct a verdict at the conclusion of the trial; § 7998 not applying to such actions (129-59, 151+532). Trial, ¶171.

An action at law is triable by a jury, though the answer pleads fraud and asks equitable relief (126-445, 148+302). Jury, ¶14(1).

In action at law for fraudulent representations, triable by jury under this section, plaintiff is not deprived of his right to a jury trial because defendant interposed alleged equities (162+1049). Jury, ¶13(18).

Time for demand—Plaintiff's demand for a jury trial, made when the case was called for trial, was seasonable (162+1049). Jury, ¶25(6).

The court has power to submit an issue to a jury after the commencement of the trial (131-62, 154+661). Trial, ¶371.

Discretion of court—Whether the issues of testamentary capacity and undue influence, on appeal to the district court from a decree of the probate court admitting a will to probate, shall be tried by a jury, is within the discretion of the district court; and issues once framed for the jury may be withdrawn before decision, and decided by the court, though the evidence is such that the court would not have been justified in directing a verdict (131-439, 155+392). Wills, ¶379, 380.

The court, in summary proceedings against an attorney under § 4956, may send issues to a jury (122-87, 141+1103).

Waiver of right—In action at law for fraudulent representations, triable by jury under this section, in which defendant alleged certain equities, plaintiff did not waive his right to a jury trial by demanding that all the issues be tried by a jury (162+1049). Jury, ¶28(1).

Questions of fact in general—A request to court to determine disputed questions of fact was properly denied (162+1068). Trial, ¶261.

That plaintiff's intestate moaned and breathed for ten minutes after receiving the fatal injury was sufficient to make it a question for the jury whether his cause of action survived under the federal employers' liability act (127-144, 149+14). Death, ¶103(1).

Whether plaintiff's intestate was rightfully in defendant's building, when a fire occurred therein which caused her death, so that she would have had the same cause of action that the tenants would have had, was a question for a jury (126-144, 148+108). Landlord and Tenant, ¶169(11).

Question of surrender of lease held for jury (128-144, 150+398). Landlord and Tenant, ¶18.

Whether there was a parol gift of land held, on the evidence, a question for the jury (126-389, 148+125). Gifts, ¶50.

Whether a gift was accepted and executed by performance sufficient to take it out of the statute of frauds held, on the evidence, a question for the jury (126-389, 148+125). Frauds, Statute of, ¶158(4).

Evidence held to raise a question of fact for the jury as to whether medicines sold by defendant to plaintiff were worthless (123-468, 143+1133). Money Received, ¶18(3).

The jury may determine the amount of damages accruing from defendant's acts, though such damage cannot be ascertained with mathematical certainty; slight circumstances being sufficient to afford a basis for apportionment by the jury (127-118, 149+18). Damages, ¶208(1).

The testimony of a witness held not so discredited by prior written statements and reports, or by his cross-examination, as to make it error to submit his testimony to the jury, as the jury had a right to consider the circumstances under which the statements were made (127-144, 149+14). Witnesses, ¶397.

Whether the operation of a switchyard constituted a private nuisance to adjacent property held a question for the jury (125-224, 146+353, 51 L. R. A. [N. S.] 1017). Eminent Domain, ¶104.

Whether a sunstroke is a disease held a question for the jury, in an action on an accident policy (125-186, 145+963). Insurance, ¶668(1).

On the evidence, held, that whether a father intentionally omitted to provide for a child in his will was a question of fact for the jury (125-40, 145+623, 51 L. R. A. [N. S.] 645). Descent and Distribution, ¶47(2).

Whether plaintiff was employed in interstate commerce, within the meaning of the federal employers' liability act, and whether he was injured by the negligence of his fellow servants, held questions for the jury (128-360, 150+1091). Master and Servant, ¶284(2), 287(4).

Failure of the court in a drainage appeal to inform the jury that they should not consider the amount of damages awarded by the viewers held an invasion of the province of the jury (122-392, 142+802). Trial, ¶133(1).

When a competent witness testifies that a photograph is a correct representation, it is not for the court to decide either that the witness is unworthy of belief or that the photograph is misleading (124-65, 144+434). Evidence, ¶380; Trial, ¶56.

Though a party's testimony may not be contradicted by direct testimony, the circumstances may be such that the credibility of his testimony is a question for the jury (127-291, 149+467).

Negligence—As to whether a surgical operation was made at a proper time held a question for the jury (124-269, 144+958). Physicians and Surgeons, ¶18(9).

Whether a city and a railroad company were negligent in permitting a precipitous cliff to exist at the side of a street, without sufficient guards to prevent a wagon backing against it from breaking through the railing and falling over the cliff, held for the jury (128-95, 150+379). Municipal Corporations, ¶819(1), 821(13), 822(2).

In an action by an employé, defendant held not entitled to a directed verdict on the ground that the evidence failed to show that plaintiff was injured within the scope of his employment, or that contributory negligence conclusively appeared (126-208, 148+113). Judgment, ¶199.

Evidence held sufficient to take the case to the jury on the issue of negligence under the federal employers' liability act (128-112, 150+385). Master and Servant, ¶276(1).

Negligence and contributory negligence in an action for injuries to an employé held properly submitted to the jury (124-466, 145+385). Master and Servant, ¶276(3).

That couplers had several inches play, and did not couple on a curve, because out of line, held to present a jury question as to whether they complied with the federal safety appliance act (122-513, 142+883). Master and Servant, ¶286(13).

Whether an employer was negligent in adopting a proper method of inspecting bottles which were being filled with carbonated water, or in not providing masks or goggles as a means of protection, and whether plaintiff assumed the risk, held, on the evidence, a question for the jury (126-364, 148+278). Master and Servant, ¶286(27), 288(3).

In an action under the federal employers' liability act, the issues of negligence, contributory negligence, assumption of risk, and proximate cause held for the jury (130-405, 153+848). Master and Servant, ¶286(22), 288(2), 289(3).

As to an employé working in a garage, who was injured by falling into an unguarded pit, newly made, held, that negligence, contributory negligence, and assumption of risk were for the jury (129-70, 151+537). Master and Servant, ¶286(22), 288(2), 289(20).

Negligence of master in failing to warn servant, and in failing to provide a mangle with a hand guard, held for the jury (128-245, 150+804). Master and Servant, ¶286(40, 41).

Whether a brakeman assumed the risk of injury from a defect in a vestibule trapdoor held a question for the jury (125-7, 145+613). Master and Servant, ¶288(2).

Contributory negligence and assumption of risk, in action by servant for injuries, held for the jury (128-245, 150+804). Master and Servant, ¶288(11), 289(10).

Whether a railroad company was negligent in permitting a board to remain in a passageway on its right of way, with a nail protruding therefrom, on which plaintiff stepped, held a question for the jury (125-256, 146+1092). Railroads, ¶282(7).

The court did not err in submitting to the jury the question whether plaintiff, injured when he was 5 years 3½ months old, was guilty of contributory negligence (180-3, 153+250). Railroads, ¶400(11).

Negligence and contributory negligence, in action against railroad company for injuries at a crossing, held for the jury (129-262, 152+408). Railroads, ¶350(30).

Negligence and contributory negligence in the case of a person alighting from a moving train, into which he had gone to assist an outgoing passenger, held for the jury (124-517, 145+746). Carriers, ¶320(2, 29).

Contributory negligence of a passenger of the driver of a team which collided with a train at a crossing held for the jury (128-14, 150+164). Negligence, ¶93(1), 136(30).

Whether a boy 8 years 10 months old was guilty of contributory negligence in attempting to cross between cars of a freight train blocking a street crossing held a question for a jury (126-279, 143+101). Negligence, ¶136(29).

Questions of agency—Whether contract was made by an agent on behalf of defendant, and whether plaintiff relied on such authority of the agent, held questions for the jury (125-311, 146+1109). Contracts, ¶323(1); Principal and Agent, ¶124(2).

Existence of agency held a question for the jury (126-346, 148+285). Appeal and Error, ¶1005(2).

In action against corporation for conversion of shares of stock owned by plaintiff and delivered by defendant to a bank, whether such delivery was authorized by plaintiff, or was rati-

fied by him, held a question of fact, and not of law (181-231, 154+1081). Appeal and Error, *see* 999(1).

Construction of contracts—Whether subsequent acts of the parties to a contract have rendered certain ambiguous parts of the written contract is a question of fact for the jury (128-490, 151+203). Contracts, *see* 176(2).

Where the intention of the parties to a written instrument is to be determined from a consideration of all the facts and circumstances surrounding the transaction, the question becomes largely one of fact for the jury (129-328, 152+732).

Construction of building contract held improperly disposed of by the trial court as a question of law; it being one of fact, or of mixed law and fact, as to which the court should have received testimony (127-129, 148+1077). Contracts, *see* 176(5).

Where a written contract is ambiguous, and the parol evidence as to its meaning is not conclusive as to the intention of the parties, the construction of the contract is properly submitted to the jury (127-241, 149+285). Contracts, *see* 176(2).

Insurance—Whether a fraternal insurance order waived nonpayment of assessments by refusing to receive payment thereof when tendered held a question for the jury (126-494, 148+299). Insurance, *see* 825(1).

Whether an injury was a visible one, within the meaning of a by-law of a fraternal benefit association, held for the jury (123-505, 144+160, 49 L. R. A. [N. S.] 1022, Ann. Cas. 1915A, 536). Insurance, *see* 668(11).

Whether a misrepresentation by an applicant for life insurance is material, whether it increases the risk of loss, and whether it was made with fraudulent intent, are usually questions of fact for the jury (123-453, 144+218, Ann. Cas. 1915A, 458). Insurance, *see* 668(6).

Evidence held sufficient to take the case to the jury on the question whether the hearing before the executive committee of a fraternal benefit order, pursuant to which assured was expelled, was such as to deprive the court of jurisdiction because no appeal was taken within the order (124-437, 145+120). Insurance, *see* 825(1).

Whether the warranty by the insured that the building, wherein was kept the property covered by the policy, was a private residence, was for the jury (125-54, 145+622). Insurance, *see* 666.

Cause of injury—Evidence in an action under the federal employers' liability act held not so conjectural as to the cause of the death of plaintiff's intestate as to render it improper to present the question to the jury (127-498, 150+165). Master and Servant, *see* 278(3).

Whether the defective floor of a bridge was the proximate cause of injury to a passenger in an automobile held a question for a jury (125-431, 147+434). Carriers, *see* 320(30).

Question of proximate cause of injury on defective bridge held for the jury (128-47, 150+221). Bridges, *see* 46(11).

Questions of law in general—Whether a transaction is usurious is usually a question of fact; but where the facts are undisputed, and only one inference can be drawn from them, it becomes a question of law (132-323, 156+666). Usury, *see* 119.

Where there is no evidence as to the location of government corners, monuments placed by a county surveyor, under § 773, are prima facie the government corners, and it is error to submit the question to the jury (124-233, 144+758). Boundaries, *see* 40(1).

Where defendant contracted to furnish ice to plaintiff, who conducted a meat market, damage to the meat from failure to deliver the ice was necessarily within the contemplation of the parties, and it was not error for the court to so instruct the jury as a matter of law (123-401, 143+1125). Sales, *see* 418(14).

Whether a buyer of ice exercised reasonable diligence, under the circumstances, to obtain a delivery of the ice, held a question for the jury (123-401, 143+1125). Sales, *see* 420.

Where a physician for insurer positively testified that insured made answer to certain questions on his application for life insurance, and signed the application, the mere fact that a witness testified that he was in the physician's outer office, and that the physician and insured were in the physician's private office at the time the application was signed no more than ten minutes did not raise a question for the jury as to whether insured gave the answers shown on the application (129-340, 152+724). Insurance, *see* 819(1).

A conceded fact is a matter of law for the court (123-453, 144+218, Ann. Cas. 1915A, 458). Insurance, *see* 668(1).

The court cannot say as a matter of law that the rule of respondeat superior does not apply, unless the evidence shows conclusively that the alleged employer possessed no control over the negligent person (128-43, 150+211). Master and Servant, *see* 284(2).

The question of loss of residence by a debtor, claiming under the exemption law, held, on the evidence, a question of law (122-228, 142+307). Trial, *see* 139(1).

There being no evidence connecting defendant with alleged fraud, it was error to submit the issue to the jury (127-340, 149+545).

Evidence held insufficient to warrant submitting to the jury the question of mental incompetency to execute a release for personal injuries (128-440, 151+188). Compromise and Settlement, *see* 8(2); Release, *see* 57(1).

Negligence—Assumption of risk by employé held not a question of law for the court (124-257, 144+955). Master and Servant, *see* 288(2).

Whether it was unreasonable for a servant to rely on assurances given him was a question for the jury, unless the court could say that reasonable minds could reach but one conclusion (127-132, 148+1078). Master and Servant, *see* 288(1, 16).

Passenger on freight train held not to have assumed the risk of injury by riding in cupola in caboose of freight train, contrary to carrier's rules, nor was he guilty of contributory negligence as matter of law (123-405, 143+1131). Carriers, *see* 347(6).

Probable cause—Want of probable cause for prosecuting a suit is for the court on undisputed facts, but the aid of a jury may be required where the facts are disputed, and whether advice of counsel protected defendant from liability for malicious prosecution was a question for the jury in this case (131-320, 155+205). Malicious Prosecution, ¶24(1), 60(4), 71(2).

What facts, and whether particular facts, constitute probable cause for a prosecution, is for the court (129-97, 151+895, Ann. Cas. 1916E, 374). Malicious Prosecution, ¶71(2).

Whether undisputed facts show probable cause for a criminal prosecution is a question for the court (128-128, 147+1093). Malicious Prosecution, ¶71(2).

7793. Of fact, how brought to trial—Issues of facts may be brought to trial by either party, upon notice served eight or more days before the beginning of a general term. At least seven days before the term one of the parties shall file a note of issue, containing the title of the action and the names of the respective attorneys, and stating the time when the last pleading was served and whether the issue is triable by the court or a jury. The clerk shall thereupon enter the cause on the calendar according to the date of issue, and it shall remain thereon, from term to term, until tried or stricken off by the court. Provided, that in all districts now or hereafter consisting of one county only, wherein but one term of court is or hereafter shall be held annually, no notice of trial need be served, but the party desiring to place a cause upon the calendar thereof for trial, shall, after issue is joined therein, prepare a note of issue containing the title of the cause, a statement as to whether the issue is an issue of law or an issue of fact, and if an issue of fact, whether triable by court or jury, and the names and addresses of the respective counsel, and shall serve the same on opposing counsel, and file such note of issue, with proof of service, with the clerk of court within ten days after such service; and, thereupon, the clerk shall set such cause for trial, in accordance with such rules as the judges of said court may make, but in no event earlier than thirty days after the filing of such note of issue, and shall notify all counsel in said cause by mail of the date of such setting. The judges of said court may, by order or rule of court, provide for the assigning and setting of cases for trial upon such calendar, and the order in which they shall be heard, and the re-setting thereof. All appeals from inferior tribunals, including probate court, justice court, county commissioners, and all boards from the decision of which an appeal lies to such court, shall in like manner be placed upon the calendar for trial. For all purposes, other than those specifically herein provided for, the first Monday in each month of the year, except in the months of July, August and September, shall be deemed the first day of a regular or general term of such district court, held in such county, and all persons committed for trial, or held to appear before such court, shall, unless otherwise provided, appear on such dates. Provided, that when the first Monday of any such month shall be a legal holiday the following day shall be deemed to be the first day of such general term of such district court. (Amended '17 c. 6 § 1)

That a motion for new trial was heard seven, instead of eight, days from the day of service of the notice, was an irregularity, not ground for reversal, in absence of a request for relief on account of the insufficiency of the notice (129-528, 152+270). New Trial, ¶165.

JURY TRIALS

7797. Jury, how impaneled—Ballots—Rules of court—Examination—Challenges—

In examining jurors, a party may elicit such information as is necessary to enable him to discover interest or bias; but he will not be permitted to excite prejudice against the adverse party. The nature and extent of the examination rests largely in the discretion of the court (134-378, 159+832). Jury, ¶131(5).

In a suit for damages from negligence, plaintiff may show by evidence that defendant is insured, as a basis of questioning the jurors as to any interest they may have in the insurance company, but mere intimations that defendant carries insurance is improper (134-378, 159+832). Trial, ¶108½.

7798. Challenges—

124-204, 144+938.

7799. Order of trial—

Not ground for reversal where no prejudice results (121-170, 141+1). Appeal and Error, ¶1046(4).

It is not error to refuse to reopen the case and permit plaintiff to introduce evidence under its reply to defendant's amended answer filed after the submission of the evidence, where the amended answer and reply presented no new issues (128-498, 151+201). Trial, \S 66.

Refusal to direct a verdict at the close of plaintiff's case is not available error, though plaintiff had failed to prove notice of her injuries to defendant city, where such evidence was in fact received before the case was submitted to the jury (126-491, 148+304). Appeal and Error, \S 1061(4).

A concession as to the facts made in the opening statement may be made the basis of a motion to dismiss, where, with such facts, there can be no recovery under the complaint (127-443, 149+667). Trial, \S 109.

Instruction which in effect directs the jury to disregard argument of counsel is fatally erroneous (124-386, 145+116, Ann. Cas. 1915B, 734). Trial, \S 218.

7800. View of premises—Procedure—

Sufficiency of request for review by jury (see 126-203, 148+113).

7802. Requested instructions—

In general—The trial court did not err in answering a question asked by a juror (124-431, 145+118). Insurance, \S 825(1).

Request for instructions, contributory negligence affecting amount of damages under federal employers' liability act (121-269, 141+175).

The court may decline to give requested instructions which are either inaccurate or do not conform to the evidence (128-193, 150+800).

Ambiguity or uncertainty in the court's charge must be called to the attention of the trial court before the jury retires (126-203, 148+113).

An instruction fundamentally wrong, or which has the effect of preventing a verdict for a substantial amount on a cause of action well pleaded, may be assigned as error on motion for new trial, though no exception is taken at the trial; but it is otherwise with respect to inaccuracies of expression and inadequate treatment of the controversy (125-441, 147+445, 52 L. R. A. [N. S.] 1176). New Trial, \S 40(4).

Requests covered by the general charge—Requested instructions, covered in substance by the charge as given, are properly refused (124-222, 144+774, 50 L. R. A. [N. S.] 170; 121-160, 141+104; 121-258, 141+164, L. R. A. 1915D, 644; 122-20, 141+810; 124-155, 144+462; 125-150, 145+806). Trial, \S 260(1).

Requested instructions covered by charge as given are properly refused (127-515, 150+176).

Failure to request instructions—Where an instruction contains misstatements or omissions due to inadvertence, it is the duty of the party complaining to request a correct instruction, and this rule is not affected by 1901 c. 113 (125-466, 147+441). Trial, \S 287.

Where no request is made by counsel, it is not error if the trial court merely fails to give an instruction on an issue presented by the pleadings (132-147, 153+513; 132-147, 155+1040). Trial, \S 255(1).

Duty to request more definite and specific instructions (121-439, 141+523). Trial, \S 273.

Verbal inaccuracies or incompleteness in a charge is not ground for reversal, where the error could have been corrected by a requested charge, but no request was made (131-482, 155+758). Appeal and Error, \S 1064(4).

Failure of the court to instruct on a particular phase of the case is not error, in absence of a request for such instruction (131-274, 154+1070). Trial, \S 256.

If an instruction is desired upon a point omitted in the general charge, a request embodying such point should be presented (122-517, 142+897, Ann. Cas. 1914D, 1056). Trial, \S 255(9).

Omission in charge is not ground for reversal in absence of request (122-343, 142+816). Torts, \S 28.

Where the court, through inadvertence, omits an exception in stating the purport of a statute, it is the duty of the party complaining thereof to call the court's attention thereto (125-431, 147+434). Appeal and Error, \S 215(4).

A misstatement in an instruction due to inadvertence is not ground for reversal, where appellant failed to call the trial court's attention thereto (129-70, 151+537).

Failure to instruct as to the character of the evidence required to prove an issue is not error, in the absence of a request therefor (125-353, 147+244).

Defendant, not having requested an instruction on assumption of risk, cannot complain on appeal of the court's failure to present that issue (124-245, 144+772). Trial, \S 255(11).

An incomplete definition of assumption of risk in an instruction is not ground for reversal, in absence of a request for a correct charge (123-109, 143+121). Appeal and Error, \S 215(1).

Defendant, having failed to call the court's attention to the fact that its instructions upon assumption of risks was included in its charge upon negligence, and having requested no further direction, was not in a position to complain (123-173, 143+322). Appeal and Error, \S 216(1).

Failure of court to instruct as to distinction between knowledge and notice, as imposing duty to warn servant, was not reversible error, in absence of request (124-1, 144+466). Trial, \S 256(9).

Where a railroad company, sued for damages to live stock, did not request an instruction as to a limitation of the amount of recovery, it could not complain on appeal of the court's failure to instruct as to such limitation (123-495, 144+220). Appeal and Error, \S 215(1).

Failure of the court to instruct on the issue of the contributing negligence of a fellow servant is not available error, where no instruction was requested thereon (124-141, 144-751). Trial, \S 255(10).

Modification of request—Where the court fairly informs the jury as to the weight of the evidence necessary to impeach a release, the refusal to state the rule in the language of the proffered request is not error (123-516, 144-407). Trial, \S 266.

If the substance of a requested instruction is given, it is not error to refuse to repeat the same thought in the language of the requested instruction (125-431, 147-434). Trial, \S 260(1).

The court need not give a requested charge in the same words in which it is asked (128-490, 151-208).

Failure of judge to mark instructions as given or refused—Failure of the court to mark requested instructions as given or refused is not reversible error, where counsel does not call the court's attention thereto until after final argument has been completed (125-431, 147-434). Appeal and Error, \S 230.

Mode of presenting instructions to jury—It is bad practice to announce to the jury that certain instructions given were requested by one of the parties, but it is not reversible error if the court makes it clear that the instruction is given as the law of the case (134-392, 159-955). Trial, \S 296(1).

That defendant's counsel read to the jury in argument some instructions which the court later gave in accordance with this section was not prejudicial error (134-392, 159-955). Appeal and Error, \S 1060(1).

7803. What papers jurors may take—

That an improper paper was taken by the jury to the jury room along with other papers held not to require a new trial, in absence of a showing of prejudice (125-291, 146-1104, Ann. Cas. 1915C, 922). New Trial, \S 56.

It was not error to decline to permit the jury, on its request, to have a transcript of the testimony of a witness given on a former trial (124-431, 145-118). Trial, \S 307(1).

It was not error to refuse to permit a letter in evidence to be taken into the jury room; the letter being read to the jury instead (124-431, 145-118). Trial, \S 307(2).

A party, desiring to have the jury take the pleadings with them to the jury room for the purpose of obtaining the benefit of admissions in the pleadings, should offer the pleadings in evidence for the express purpose of introducing the admissions, and a mere general offer of the pleadings as evidence is insufficient (133-156, 157-1073). Trial, \S 48.

7804. Verdict, when received—Correcting same—Polling jury—

The court may correct formal or clerical errors in a directed verdict after the verdict is recorded and after the time for appeal has expired (123-420, 144-148). Trial, \S 340(1).

When the jury returns a verdict which is not justified in any view of the evidence and law of the case as embodied in the instructions, the court may refuse to accept it and require the jury to return and report a proper verdict (129-372, 152-765). Trial, \S 339(3).

7805. Five-sixths of jury may render verdict, etc.—

This section is applicable to bastardy proceedings (135-65, 160-189). Jury, \S 32(4).

This section is applicable to an action in a state court based upon the federal employers' liability act (126-251, 148-104; 134-61, 158-796; 128-112, 150-385). Trial, \S 321½.

It is the province of a trial court to determine whether a jury has given sufficient consideration to a case to justify a reception of a verdict not unanimous, and such determination will not be reversed, unless the discretion is abused or the law has not been complied with (126-180, 148-51). Appeal and Error, \S 975.

Where the verdict is concurred in by twelve jurors, the defeated party cannot raise the question of the constitutionality of this act (132-391, 157-650).

What constitutes twelve hours' deliberation—A recital in the verdict that it was rendered after twelve hours' deliberation makes a prima facie showing that it was properly rendered by five-sixths of the jury, which is not overcome by a notation of the hour and minute at which the agreement is reached or the verdict signed (131-236, 154-1075). Trial, \S 321½.

A statement by a juror that ten of the jurors agreed on the verdict finally rendered by them shortly after the jury retired, but did not sign it until after the 12 hours' deliberation, did not show that there was not 12 hours' deliberation and effort to agree, as contemplated by the statute (131-231, 154-1081). Trial, \S 321½.

The length of time devoted to meals and sleep while a jury are deliberating cannot be shown, for the purpose of proving that they did not deliberate for the prescribed length of time (126-180, 148-51). Trial, \S 321½.

7807. Verdict, general and special—

A general verdict for plaintiff for the exact amount of his claim necessarily determines the defendant's counterclaim contrary to his contention (127-440, 149-950).

7808. Same—Interrogatories—Special findings—

It is within the discretion of the trial court to grant or refuse a request to submit special interrogatories to the jury (127-468, 149-947). Trial, \S 349(2).

The matter of submitting special issues, as well as their form and substance, rests in the sound discretion of the trial court (132-181, 156-251, L. R. A. 1916D, 144). Trial, \S 352(1).

When a special finding submitted to the jury is material, it cannot be withdrawn by the

court or ignored by the jury, without the consent of both parties (123-353, 143+975). Trial, ⚡356(1).

Court may correct formal or clerical errors in a directed verdict, after the verdict is recorded and the time for appeal has expired (123-420, 144+148). Judgment, ⚡299(1); Trial, ⚡340(1).

A special verdict, which does not negative any essential element of the cause of action, neither controls, nor is inconsistent with, the general verdict (122-171, 142+145). Trial, ⚡359(1).

7812. Receiving verdict—

It is not reversible error, if the court in a civil action fails to notify absent counsel when the jury returns into the courtroom, either for additional instructions or to return the verdict (129-372, 152+765). Trial, ⚡21.

7813. Entries on receiving verdict—Reserving case—Stay—

Suspension of sentence for a definite period held proper, and within the discretion of the court (125-529, 147+273). Criminal Law, ⚡1001.

A stay does not prohibit the prevailing party from resorting to such ancillary remedies as garnishment or attachment (123-353, 143+975). New Trial, ⚡12.

TRIAL BY THE COURT

7815. Decision, how and when made—

Amendment of findings—Denial of motion to make new and amended findings after remand of cause from supreme court held proper (130-530, 152+866). Appeal and Error, ⚡1213; Trial, ⚡400(2).

Plaintiff's application to amend the findings of the trial court held properly refused (125-322, 147+107). Trial, ⚡400(1).

Court need not amend findings as to contentions not within the pleadings or made until the motion to amend (122-59, 141+1105). Trial, ⚡400.

Necessity of motion for amendment of findings, and construction of findings in absence of motion to amend same or for new trial (see 127-530, 149+1070). Trial, ⚡400(1).

The court has power to supply an omission in the findings, even after judgment (134-468, 158+757). Trial, ⚡400(1).

What findings not necessary—Formal findings of fact are not required on an interlocutory motion for allowance of attorney's fees for trustee (125-322, 147+107). Trial, ⚡388(2).

Findings are not proper on motion for judgment on the pleadings (129-181, 151+970). Pleading, ⚡350(3).

Where the complaint sets up an action at law, the fact that the answer pleads fraud and asks equitable relief does not require that the court should make findings instead of directing a verdict (126-445, 148+302). Trial, ⚡388(1).

It is not necessary, in a will contest, to make a specific finding of the facts upon which the right of the objector to contest the will depends (129-460, 152+872). Wills, ⚡334.

Court need not make findings on immaterial matters (122-295, 142+710). Trial, ⚡1; Vendor and Purchaser, ⚡33.

Refusal of findings of evidentiary facts held proper (122-510, 142+885). Trial, ⚡401.

Nature of facts to be found—A judgment will be affirmed, though a material finding is lacking, when it clearly appears that its omission was an oversight, and the evidence is conclusive as to what it should be (134-468, 158+787). Appeal and Error, ⚡1071(6).

The court should make findings upon every material issue of fact, the determination of which is necessary to sustain its judgment (132-160, 156+268). Trial, ⚡388(1).

Where title to real estate is in controversy, a finding that one party is the owner thereof is a finding of the ultimate issuable fact, and a finding of the evidentiary facts which result in such conclusion is unnecessary (132-144, 155+1038). Trial, ⚡395(5).

That parts of a finding of fact may be immaterial does not require a new trial, or a change in the conclusions of law (132-321, 156+348). New Trial, ⚡61.

Findings held to negative payment set up as a defense in the answer (131-249, 154+1072). Trial, ⚡404(1).

Conclusions held justified by the findings of fact (122-17, 141+789; 131-249, 154+1072). Trial, ⚡395(7).

Court, having determined total amount due, need not make specific findings as to each item (121-285, 141+186). Trial, ⚡395(1).

In an action for money had and received, a finding that the relation of principal and agent existed between plaintiff and defendant held not improper, though such agency was not pleaded (127-502, 150+167). Money Received, ⚡18(3).

Findings that one quarterly installment of rents were paid to a mortgagor during the period of redemption held not sufficient to authorize the trial court to determine the amount due to the mortgagor (135-443, 161+165). Mortgages, ⚡491.

Findings which do not cover material issues will not support conclusions of law embracing those issues (128-5, 150+216).

Review—Where the findings are insufficient to support the conclusions of law, the defeated party is not required to move to amend the findings in order to raise the question for the first time on appeal (128-5, 150+216). Appeal and Error, ⚡237(6).

When an action is tried by court, its findings of fact are entitled to the same weight as

a verdict, and will not be reversed unless manifestly contrary to the evidence (162+679). Appeal and Error, ¶1008(1).

The supreme court cannot make findings of fact (129-380, 152+774; 134-276, 159+566). Appeal and Error, ¶1122(2).

A positive and unambiguous order of the trial court cannot be modified or limited by inferences drawn from a memorandum of the judge not made a part thereof (123-231, 143+728). Motions, ¶62.

A contention not sustained by findings will not be considered, in the absence of a request in the trial court for findings (122-448, 142+876). Appeal and Error, ¶219(2).

The refusal of the trial court to make additional findings will not be reversed, unless the evidence is conclusive in favor of such proposed findings, nor where the proposed findings are in conflict with those already made (130-450, 153+874). Appeal and Error, ¶1023.

Findings control memorandum—The findings of fact control the memorandum of the trial judge (131-16, 154+512).

Findings without judgment as a bar—If a finding without a judgment is ever a bar, it must be upon an issue in the case where it is made, and there must be something equivalent to an estoppel against parties to assert the contrary. In state's action of trespass for taking of timber, finding on issue in a former case offered in bar held not an estoppel operating against the defendant (162+1054). Judgment, ¶658.

7816. Proceedings on decision of issue of law—

Where a demurrer was overruled, and judgment was entered for plaintiff without notice, but no application was made to the trial court for leave to answer or vacate the judgment, the question whether defendant was entitled to answer or to have the judgment vacated cannot be considered upon appeal (126-367, 148+306). Appeal and Error, ¶224.

7817. Court always open—Decisions out of term—

Powers of court commissioner (see 131-129, 154+748). Court Commissioners, ¶4.

GENERAL PROVISIONS

7825. Dismissal of action—

Cited (127-416, 149+735).

In general—A judgment of dismissal is not evidence in a subsequent suit between the same parties for the same cause (123-17, 142+930, L. R. A. 1915B, 1179, 1195). Judgment, ¶570(3, 4).

Where one who has contracted with an agent of an undisclosed principal sues both principal and agent, the remedy of the defendants is a motion to compel plaintiff to elect as to which defendant he will proceed against (124-421, 145+173). Principal and Agent, ¶184(2).

Vacation or setting aside of dismissals—Rights of stockholders as to dismissal of action in which the corporation is interested (122-355, 142+818, Ann. Cas. 1914D, 830). Corporations, ¶204.

The court has jurisdiction to vacate a judgment of dismissal, though it terminates the action, on the ground of fraud and collusion, at the motion of a party or strangers having an interest in the subject-matter (122-355, 142+818, Ann. Cas. 1914D, 830). Dismissal and Nonsuit, ¶43(2).

A plaintiff who acts in a fiduciary capacity has no absolute right to dismiss the action, and if he does not act in good faith in doing so the order of dismissal may be set aside (122-355, 142+818, Ann. Cas. 1914D, 830). Dismissal and Nonsuit, ¶43(4).

On reinstatement of case after dismissal on application of defendant, on plaintiff's failure to appear at the time set for trial, held, that the court properly required plaintiff to pay the expense incurred by defendant in bringing a witness from Canada for the trial (135-471, 160+1032). Dismissal and Nonsuit, ¶81(8).

Subd. 1—A dismissal in a court of another state is not to be counted in determining the number of successive dismissals (128-49, 150+397). Dismissal and Nonsuit, ¶42.

Consent to a dismissal precludes a subsequent motion to strike the consent and grant a new trial (123-532, 144+137). Appeal and Error, ¶883.

An appeal, taken under §§ 5407-5409, on the question of damages, may be dismissed by the appellant under this section (128-66, 150+222). Eminent Domain, ¶238(1, 7).

Subd. 2—Appellants cannot dismiss the appeal by merely serving a notice of dismissal upon appellee (134-464, 157+327). Appeal and Error, ¶776.

Subd. 3—Where subsequent grantee of a mortgagor and an assignee of the purchaser at a foreclosure sale were plaintiffs in an action against the original covenantor for breach of covenant of warranty, it was not error to dismiss as to all the plaintiffs except such assignee (126-14, 147+670). Covenants, ¶80.

A judgment entered upon a dismissal of an action on motion of the defendant at the close of plaintiff's testimony for insufficiency of evidence is not res judicata (124-495, 145+380). Judgment, ¶570(5).

A case may be dismissed, where plaintiff, in his opening statement, concedes facts which prevents his recovery under the complaint (127-443, 149+667). Trial, ¶109.

A misnomer of defendant railroad company, by adding to its corporate name the words "Relief Department," was not a ground for dismissal, jurisdiction having been acquired; the defect being amendable as of course (133-434, 158+711). Parties, ¶95(5).

Subd. 4—A case held properly on the calendar, and properly dismissed for want of prosecution (126-108, 147+822). Venue, [§72](#).

Where a supersedeas bond is not approved, and does not stay proceedings, the action may be dismissed by the trial court for want of prosecution (135-474, 159+1067). Appeal and Error, [§452](#), 470.

7826. Offer of judgment—Costs—

Tender as waiver of defense that debt is not due (121-285, 141+186). Tender, [§26](#).

The offer contemplated by this section may be made in defendant's answer (135-343, 160+864). Costs, [§42\(2\)](#).

NEW TRIALS

7828. Grounds—Presumption on appeal—

THE STATUTE GENERALLY

Other remedy—The proper remedy for the omission to find on an issue is not by motion for new trial, but by application to the court for a finding (134-468, 158+787). New Trial, [§61](#); Trial, [§399](#).

Of less than all the issues—Where two issues are submitted to the jury, and one is found in favor of one party, and the other in favor of the other, and a motion for new trial on but one of the issues is filed, the court may grant a new trial as to that issue alone (122-463, 142+729). Wills, [§337](#).

A new trial may be granted as to a part of the issues less than an entire cause of action. A new trial may be granted as to certain distinct claims, where the court erred in excluding evidence as to such claims (131-389, 155+391). Appeal and Error, [§1172\(3\)](#).

IRREGULARITY OR ABUSE OF DISCRETION

Misconduct in general—A new trial will seldom be granted on the ground of abuse of discretion of the trial court in rebuking counsel (122-301, 142+812, 48 L. R. A. [N. S.] 842, Ann. Cas. 1914D, 804). Appeal and Error, [§972](#).

Remark of trial judge that conduct of defendant's counsel was contemptible, and not fair and right, held not ground for new trial (122-343, 142+816). Appeal and Error, [§1060\(1\)](#).

The fact that an improper paper was taken, with other papers, to the jury room, held not ground for new trial (125-291, 146+1104, Ann. Cas. 1915C, 922). New Trial, [§56](#).

Quotient verdict (129-14, 151+408). Trial, [§315](#).

MISCONDUCT OF THE JURY

In general—A mere showing that after the trial a juror associated with the successful party on terms of intimacy was not such misconduct as to require a new trial (124-260, 144+950). New Trial, [§47](#).

When a mistake of the jury in writing up the verdict unanimously agreed upon is clearly shown, the question of discretion of the trial court in the grant of a new trial is not involved (135-13, 159+1070). New Trial, [§58](#).

Misconduct of the jury, such as drinking intoxicants, not prejudicial, and not brought about by the prevailing party, is not ground for new trial; but, where an interested person associates with the jurors and drinks with them, there is such misconduct as will vitiate a verdict favorable to the interest of such meddler (130-206, 153+526). Bastards, [§69](#); New Trial, [§56](#); Trial, [§304](#).

Affidavits on motion and testimony of jurors—Affidavits of all the jurors that by a clerical error of the jury the verdict returned was the opposite of that unanimously agreed upon may be considered on a motion for new trial (135-13, 159+1070, distinguishing 27-108, 6+450). New Trial, [§143\(4\)](#).

The testimony of a juror held improperly received to impeach a verdict, unless the testimony relates to matters which occurred outside of court (126-180, 148+51). Trial, [§306](#), 344.

Unauthorized view—The decision of the trial court that an unauthorized view by a juror of the locus in quo did not influence the verdict is sustained (126-168, 148+61). New Trial, [§56](#).

The action of jurors in examining a vehicle, or the place where the collision with such vehicle occurred, held ground for new trial (126-90, 147+716). Appeal and Error, [§1015\(5\)](#).

Examination of articles not in evidence (121-326, 141+300). New Trial, [§44\(4\)](#).

MISCONDUCT OF COUNSEL

In general—An application for a new trial on the ground of misconduct of counsel is largely addressed to the sound discretion of the trial court, and such discretion will not be disturbed, unless clearly abused (130-80, 153+269). New Trial, [§29](#).

Though the granting of a new trial for misconduct of counsel in his argument to the jury is within the sound discretion of the trial court, it is prejudicial error to fail to instruct, on request, that the jury should disregard improper remarks of counsel (133-192, 158+46). New Trial, [§29](#).

Remarks by attorney of prevailing party in argument held not ground for new trial (128-245, 150+804). New Trial, ¶32.

Alleged improper remarks by counsel in his argument to the jury held not ground for a new trial (127-15, 148+476). Trial, ¶133(6).

ACCIDENT OR SURPRISE

134-481, 159+1095; 134-292, 157+499; 134-292, 159+623.

Where one moving for a new trial on the ground of accident and surprise, based on the affidavit of a witness that he was mistaken in his testimony as to dates, had given such witness a searching cross-examination on the trial, denial of the motion for new trial was not a breach of discretion (134-468, 158+787). New Trial, ¶90.

Trial court held not to have abused discretion in denying new trial (121-455, 141+803). New Trial, ¶82.

NEWLY DISCOVERED EVIDENCE

161+515; 132-114, 155+1074; 135-9, 159+1075.

In general—Denial of new trial held proper (121-445, 141+795).

A motion for a new trial, based on newly discovered evidence, held properly denied (125-343, 147+111).

Denial of a new trial for newly discovered evidence held not an abuse of discretion (135-292, 160+793). New Trial, ¶106.

An order denying a new trial on the ground of newly discovered evidence will be reversed only where it violates a clear legal right of appellant or involves an abuse of discretion (131-3, 154+441). Appeal and Error, ¶981; New Trial, ¶99.

The grant of a new trial for newly discovered evidence is within the discretion of the trial court, and its ruling will not be disturbed, except in a case of clear abuse of discretion (130-469, 153+867). Appeal and Error, ¶981.

A motion for new trial on the ground of newly discovered evidence is addressed to the discretion of the trial court (130-304, 153+613). New Trial, ¶99.

Award of a new trial for newly discovered evidence rests largely in the discretion of the trial court, whose action will not be disturbed, where abuse of discretion is not shown (133-156, 157+1073).

Showing on motion—Where no diligence is shown a new trial on the ground of newly discovered evidence is properly denied (129-460, 152+872). New Trial, ¶102(1).

Where the party moving for a new trial on the ground of newly discovered evidence, consisting of the affidavit of a witness that he was mistaken in his testimony as to dates, had given such witness a searching cross-examination on the trial, denial of a new trial was not an abuse of discretion (134-468, 158+787). New Trial, ¶90.

Cumulative evidence—Newly discovered evidence, cumulative in character, is not ground for a new trial (125-401, 147+279). New Trial, ¶99.

Newly discovered evidence, cumulative and directed to collateral matters, is not ground for new trial; the excuse for not producing it at trial being weak (123-319, 143+793, Ann. Cas. 1915A, 257). New Trial, ¶99.

Newly discovered evidence, cumulative in character, is not ground for new trial (122-510, 142+885). New Trial, ¶104(2).

EXCESSIVE OR INADEQUATE DAMAGES

134-477, 159+1095.

Inadequate damages—Actions open to losing party—A motion by plaintiff for a new trial on the ground of inadequate damages may be resisted by defendant on the ground that defendant should have prevailed on the merits (122-444, 142+706). New Trial, ¶75(1).

General principles—In determining whether passion or prejudice influenced the jury to give excessive damages, the whole record may be examined, and not alone the erroneous rulings whereby evidence tending to create passion and prejudice was received (131-320, 155+205). Appeal and Error, ¶839(2).

Where damages are not ascertainable by any fixed standard, the trial court may order a new trial conditioned on a reduction of the verdict, though the amount is so excessive as to evince passion and prejudice, where it cannot with reason be said that such passion and prejudice affected the other issues in the case (131-261, 154+1100). New Trial, ¶162(3).

The award of a new trial for excessive damages, or the reduction of the verdict on account of such excessiveness, rests in the sound discretion of the trial court, and the supreme court will not interfere unless the discretion is abused (127-373, 149+544). Appeal and Error, ¶979(5); New Trial, ¶76(4).

The supreme court should not grant a new trial for excessive damages, unless the evidence is so manifestly and palpably against the verdict that the trial court violated a clear right of defendant, and abused its discretion, in refusing a new trial (123-480, 144+149, 49 L. R. A. [N. S.] 756). Appeal and Error, ¶1005(2).

Where interest, properly claimed in the complaint, may account for an alleged excessiveness of a verdict, a new trial will not be granted (122-39, 141+847). Damages, ¶140.

A verdict in excess of the amount demanded in the complaint held not to indicate passion and prejudice on the part of the jury (135-248, 160+665). Appeal and Error, ¶1004(1).

The record on appeal held not to indicate that a verdict was given under the influence of passion and prejudice (129-372, 152+765).

Necessity of passion or prejudice—A new trial will not be granted on the ground of excessive damages, nor will the verdict be reduced, unless the award was made under the influence of passion and prejudice (127-373, 149+544). Appeal and Error, *see* 979(5); New Trial, *see* 76(4).

Remittitur—Where a verdict in excess of the amount claimed in the complaint is supported by the evidence, a new trial may be denied on entry of a remittitur (123-222, 143+715). New Trial, *see* 162(2).

Where the only error alleged is the amount of the damages, a new trial may be granted on that issue alone; and where defendant's testimony admits a certain amount, plaintiff may be given the option of accepting that amount in lieu of a new trial (124-421, 145+173). Appeal and Error, *see* 1140(1), 1178(3).

Contracts and bonds—A verdict for \$3,331.71 for breach of contract held excessive in the amount of \$200 (127-15, 148+476).

A verdict for \$5,898.55 held not excessive, in an action on a common-law bond given by an appellant (123-218, 143+355). Damages, *see* 137; Judgment, *see* 874(1).

For personal services—Verdict for \$309, for wages of a patrolman from August 10 to December 7, 1914, held not excessive (132-238, 156+283).

A verdict for \$750, for personal services, held not excessive (130-296, 153+616).

A verdict for \$5,000 for services of attorneys in procuring the cancellation of an antenuptial settlement by which the client received about \$500,000, held not excessive (130-196, 153+310). Attorney and Client, *see* 148(3).

Breach of promise to marry—\$800 held not excessive for breach of a promise to marry (123-498, 144+213, 49 L. R. A. [N. S.] 757, Ann. Cas. 1915A, 295). Breach of Marriage Promise, *see* 31.

A verdict for \$17,425 held not excessive for breach of a promise to marry (126-350, 148+500, Ann. Cas. 1915D, 491). Breach of Marriage Promise, *see* 31.

Injuries to personal property—A verdict for \$350 for injury to goods carried held not excessive (124-357, 145+115). Carriers, *see* 135.

Verdict for \$750 held not excessive for injuries to live stock while being unloaded by a carrier in the course of transportation (123-495, 144+220). Carriers, *see* 229(2).

Verdicts for \$220, \$160, and \$620, for loss of goods by fire, held not excessive (124-219, 144+937, Ann. Cas. 1915B, 705). Damages, *see* 139.

\$1,300, for destruction of timber by fire set out by locomotive, held not excessive (121-357, 141+491, 45 L. R. A. [N. S.] 215).

A verdict for \$550, reduced by the trial court to \$375, for destroying a crop of hay and killing the roots of the grass by flowage from defendant's dam, held not excessive (130-531, 153+271). Waters and Water Courses, *see* 114.

Injuries to lands and waters—A verdict for \$300, reduced by the trial court to \$225, held not excessive for injury to land and structures thereon by flowage from defendant's dam (130-80, 153+269). Waters and Water Courses, *see* 114.

\$3,500 held excessive for a trespass on land, and reduced to \$3,300 (126-470, 148+311, L. R. A. 1916E, 977). Damages, *see* 108.

\$300 held not excessive damages for a trespass on land (126-488, 148+296).

\$31,339.50 held not excessive for pollution of a spring (122-510, 142+885). Waters and Water Courses, *see* 107(1).

\$875 held not excessive for injury to abutting property by lowering the grade of a street (129-59, 151+532).

\$900 held not excessive for wrongful diversion of water from plaintiff's mill (123-523, 143+111). Appeal and Error, *see* 1005(2).

Misrepresentation on sale of property—A verdict of \$1,200 for false representation on sale of a horse held excessive, and reduced to \$600 (124-374, 145+32). Fraud, *see* 59(3), 60.

A verdict for \$3,616 for deceit in the sale of land held not excessive (134-91, 158+824, L. R. A. 1916F, 780). Appeal and Error, *see* 1004(1).

Damages on condemnation of land—Damages awarded in condemnation proceedings held not so inadequate as to indicate passion and prejudice (128-415, 151+198). Eminent Domain, *see* 150.

Verdict of \$5,040, for land appropriated by railroad company, held excessive, and reduced to \$3,500 (124-413, 145+161). Eminent Domain, *see* 263.

Insult—\$300 for refusal of street car conductor to accept transfer, accompanied by rough language, held excessive (121-530, 141+304). Carriers, *see* 277(6).

Procurement of discharge—That the trial court reduced a verdict of \$5,750, for malicious procurement of discharge of plaintiff as school superintendent, to \$2,500, held not to require a new trial on defendant's motion, on the ground that the action of the court indicated that the jury were so prejudiced that they could not have properly considered the merits of the case (122-343, 142+816). Appeal and Error, *see* 1004(3).

False imprisonment—A verdict for \$4,250 for false imprisonment held not excessive (134-58, 158+721). False Imprisonment, *see* 36.

Libel—A verdict of \$3,000 for libel held excessive (132-399, 157+640, L. R. A. 1916E, 771).

A verdict for \$500 held not excessive for a libel affecting plaintiff's financial credit and standing (131-435, 155+619).

Malicious prosecution—Verdicts for \$3,250 held not excessive for a malicious prosecution (130-229, 153+532, Ann. Cas. 1916C, 267). Malicious Prosecution, *see* 69.

In an action by a tenant against his landlord for malicious prosecution of suits against the tenant growing out of a dispute as to the duty of making repairs, the admission in evidence of

a letter written by an insurance agent to the tenant, in which such agent expressed the opinion that it was the landlord's duty to make repairs, was erroneous, as tending to inflame the minds of the jury in the assessment of damages (131-320, 155+205). Malicious Prosecution, §55, 58(1), 60(1).

A verdict for \$3,750 for malicious prosecution of civil suits held excessive (131-320, 155+205).

A verdict of \$57,500 held excessive for unfair competition and malicious prosecution of civil suits (123-17, 142+930, L. R. A. 1915B, 1179, 1195). Damages, §137.

For death—A verdict for \$4,585 for death of a farmer 61 years of age, who left a daughter of 13 and a son of 20, and four married sons and daughters, is not excessive (135-37, 159+1087). Death, §99(4).

A verdict for \$5,000, reduced by the trial court to \$3,500, for death of a boy 14 years of age, held not excessive (134-451, 159+1076, L. R. A. 1917B, 548). Death, §99(3).

A verdict of \$5,000 held not excessive for death of a workman 49 years of age and earning 25 cents per hour, and leaving a widow and posthumous child (129-206, 152+137). Death, §99(4).

A verdict of \$7,500 for death of a farmer 51 years old, whose farm was incumbered, and who left a wife, a son 22 years old, and a married daughter, held not excessive (129-506, 152+882). Death, §99(4).

A verdict for \$4,500 for death of a janitor and fireman, 38 years old, earning \$11 per week, and leaving a widow and children, held not excessive (130-186, 153+323, 593). Death, §99(4).

\$3,000 for death of boy 16 years old, who was a high school student, intelligent, active, and obedient (121-388, 141+488). Death, §99.

A verdict for \$18,000, for wrongful death under the federal employers' liability act, held excessive, and reduced to \$12,000 (131-166, 154+957). Death, §99(1).

A verdict of \$700 held not excessive for death of a husband, who had abandoned his wife and beneficiary, and had not furnished her support for seven years prior to death (133-41, 157+904). Death, §99(4).

Where the liability of defendant for death of an employé of a third person was fixed on the trial, and the only error consisted in awarding compensation under § 8175, instead of under the workmen's compensation act, a new trial should not have been granted, but the recovery should be reduced to the amount recoverable under the compensation act (134-113, 158+913). Master and Servant, §411.

Personal injuries in general—A verdict for \$2,500 for injuries resulting from the negligence of a physician in leaving a gauze pack or sponge in the abdominal cavity of a woman after an operation, from which she suffered for several months, and which left her in impaired health and in a nervous and enfeebled condition, held not excessive (135-453, 151+144). Physicians and Surgeons, §18(11).

Verdict of \$16,500, reduced to \$12,000 by the trial court, held not excessive, where plaintiff was incapacitated from serving as a railroad engineer; but leave granted to apply to the trial court, on evidence discovered since the trial, for reconsideration thereof only (124-245, 144+772). Appeal and Error, §1121.

A judgment in a personal injury action will not be reversed merely because the supreme court would have been better satisfied with a smaller recovery (125-528, 147+273). Appeal and Error, §1004(4).

An award of \$1,875 for personal injuries held not so inadequate as to show passion and prejudice (131-209, 154+960). Appeal and Error, §930(1).

A verdict for \$9,015, reduced by the trial court to \$7,000, for injuries to a boilermaker 31 years of age, held not excessive (130-134, 153+267). Appeal and Error, §1004(3).

A verdict for \$1,750 for injuries to a passenger held not excessive (130-36, 153+117). Damages, §132(1).

A verdict of \$4,966, reduced by the trial court to \$4,000, held not excessive for injuries to a bricklayer, which rendered him unable to work for a year, and from which he suffered a loss in wages of \$2,000 (131-475, 155+767). Damages, §131(1).

Where plaintiff's injuries caused her to be confined at a hospital for a time, a verdict for \$3,000 was excessive, no bones being broken, and the evidence as to any injuries that may have resulted from the accident being uncertain and speculative (132-54, 155+1058). Damages, §131(1).

Verdict for \$5,835 held not excessive for injuries received in a collision between a street car and an automobile (121-445, 141+795).

Verdict for \$1,750 to a husband for injuries to the wife, who was awarded but \$500, held excessive, and reduced to \$1,000 (133-370, 158+623). Damages, §186.

A verdict for \$5,500 held not excessive for injuries to a woman, consisting of permanent impairment of eyesight, fractured ribs, and injured spine (133-368, 158+611). Damages, §132(3, 14).

\$750 held not excessive for injuries, consisting of three fractured ribs, incapacitating plaintiff, who earned \$35 a month, from work for over seven months (122-49, 141+849). Damages, §131(1).

A verdict for \$5,000, reduced by the trial court to \$3,500, held not excessive for injuries to a section hand (128-505, 151+177). Damages, §132(1).

\$1,970 held not excessive for injuries to an employé from falling into a pit in a garage (129-70, 151+537).

\$6,000 for injuries to electrician 36 years of age, earning from \$110 to \$130 per month; his leg having been fractured, and he having suffered permanent injuries, rendering him practically unable to work, held not excessive (128-449, 151+274). Damages, §132(1).

For injuries consisting of a permanent dislocation of the clavicle or collar bone, preventing plaintiff from doing heavy manual labor with his left arm, a verdict for \$17,000, reduced by the trial court to \$10,000, is excessive, and reduced to \$7,500 (161+400). Damages, $\text{\$}132(1)$.

A verdict for injuries to health from exposure in an unheated passenger depot held not excessive (130-300, 153+600).

A verdict for \$750 for injuries to a man of 39, who was earning good wages and lost five months' time, was not excessive (134-382, 159+828). Damages, $\text{\$}131(1)$.

\$16,000 held not excessive damages for injuries to a passenger which rendered him a physical wreck and resulted in his death (123-173, 143+322). Damages, $\text{\$}132(1)$.

A verdict for \$2,500 for injuries from negligence of a physician in taking an X-ray, leaving a sore which remained open and unhealed a year after the application of the X-ray, and which prevented plaintiff a woman, from working, held not excessive (134-458, 159+1073). Damages, $\text{\$}132(2)$.

\$2,050 held not excessive for injuries to a switchman, 29 years old, earning \$105 per month; he having suffered a loss of two teeth, a serious ankle sprain, aggravation of appendical troubles, and injury to the back (127-87, 148+893). Damages, $\text{\$}132(1)$.

Possibility of permanency of personal injuries—Where the evidence as to permanency of an injury was unsatisfactory to the trial court, and the verdict reduced one-half, a new trial should have been granted, instead of requiring a reduction (126-430, 148+309). New Trial, $\text{\$}162(2)$.

\$1,900 held not excessive for internal injury, though defendant's evidence tended to show that the injury might be entirely removed by an operation costing \$200 (123-480, 144+149, 49 L. R. A. [N. S.] 756). Damages, $\text{\$}168(2)$.

Paralysis and injuries to spine or nervous system—For injuries to a leg \$11,337 held excessive and reduced to \$8,500; plaintiff having been confined to a hospital on account of the injury for five months, and partial paralysis resulting, but it not appearing that plaintiff will not be able to earn a living in spite of the injury (127-475, 149+938). Damages, $\text{\$}132(3)$.

\$35,000 held excessive for injuries to an express messenger, whose spinal cord was affected, and his earning capacity virtually destroyed, and reduced to \$30,000 (128-228, 150+807, L. R. A. 1915F, 1). Damages, $\text{\$}132(3)$.

A verdict for \$10,000, for serious injuries to the spine and back of a switchman 27 years of age, held not excessive (134-61, 158+796). Damages, $\text{\$}132(3)$.

A verdict for \$3,000 held not excessive for injury to the nervous system causing permanent disability (133-367, 158+611). Damages, $\text{\$}132(3)$.

A verdict for \$12,000, reduced by the trial court to \$9,000, held not excessive for injuries to a man of 38, earning \$125 to \$130 per month, whose injuries were permanent, consisting of curvature of the spine and stiffening of the shoulder joint (128-119, 150+882). Damages, $\text{\$}132(3)$.

Rupture and internal injuries—A verdict for \$3,750, reduced by the trial court to \$2,750, for injuries to a female employé, consisting of the dislocation of a kidney, held not excessive, though the evidence as to whether the dislocation resulted from the accident on which the action was based was inferential (131-261, 154+1100). Damages, $\text{\$}132(4)$.

A verdict of \$7,500, for death of a yard employé, 32 years old, strong and healthy, earning from \$90 to \$100 per month, and married, but leaving no children, held excessive, and reduced to \$5,000 (127-381, 149+660). Death, $\text{\$}99(4)$.

A verdict for \$6,080, reduced by the trial court to \$4,500, for injuries consisting of a rupture, injury of the sacroiliac joint, and hemorrhoids, held not excessive (131-493, 154+943). Damages, $\text{\$}132(4)$.

\$1,750 for injuries to a brakeman, 37 years old, resulting in a partial or complete hernia, curable only by an operation, and causing a lame back, which continued to the time of the trial, five months after the accident, all of which, complicated with a nervous disorder, prevented him from doing work (127-518, 148+617). Damages, $\text{\$}131(4)$.

A verdict for \$5,000 for an assault, resulting in a rupture, impairing plaintiff's earning capacity and causing him pain and loss of time, held excessive, and reduced to \$3,000 (125-401, 147+279). Damages, $\text{\$}132(4)$.

Injuries to women—A verdict for \$8,871 for injury to a woman engaged in the grocery business, the injury causing neurasthenia or psychasthenia, and consequent physical ailments of a permanent nature, held excessive, and reduced to \$5,000 (131-327, 155+104). Damages, $\text{\$}132(5)$.

A verdict for \$6,750 for injuries to a young woman stenographer, earning \$50 per month, held excessive, and reduced to \$5,000, though she suffers from a severe nervous disorder as a result of the accident, which prevents her from working; it not appearing that any organic disorder resulted from the injury, or that the nervous trouble is permanent (130-263, 153+525). Damages, $\text{\$}132(5)$.

\$7,000 to a woman 20 years of age, a servant employed at a boarding house, for injuries which disfigured her face permanently, held not excessive (123-131, 143+117). Damages, $\text{\$}132(5)$; Explosives, $\text{\$}12$.

\$3,000 held not excessive for injuries to a married woman 22 years old, by which she suffered a nervous shock which rendered her unable to work, and such condition continued five months after the accident, and she was suffering from a functional nervous disease (128-491, 148+304). Damages, $\text{\$}131(5)$.

Injury to hip leg or foot—\$4,225, reduced by trial court to \$3,500, held not excessive for injury to a teamster, consisting of permanent stiffening of the knee, accompanied by much pain, and injuries to the back (129-14, 151+408). Damages, $\text{\$}132(6)$.

Where plaintiff, capable of earning \$40 to \$50 per month, including his board, was beaten by defendant, his right leg broken, and confined to hospital fourteen weeks, a verdict for \$1,200 was not excessive, and was not the result of passion and prejudice (129-517, 152+880). Assault and Battery, \S 40.

A verdict of \$6,225, awarded to a six year old boy for injuries, consisting of the breaking of both legs, leaving a permanent deformity of the limbs, but which will not prevent him from getting about, held excessive, and reduced to \$5,000 (130-314, 153+611, L. R. A. 1915F, 11). Damages, \S 132(6).

For injuries to a laborer, 49 years old, earning 25 cents an hour, whose leg and shoulder were permanently injured, \$9,850 held excessive, and reduced to \$7,000 (128-270, 150+919). Damages, \S 132(6).

A verdict of \$2,000, awarded a minor whose foot was crushed, necessitating an operation and leaving a permanent impairment of the foot, causing total loss of earnings for a year, diminution of earnings, and \$300 expenses, was not excessive (162+520). Damages, \S 132(6).

A verdict for \$750, reduced by the trial court to \$500, held not excessive for injuries to a child 9 years old, such injuries consisting of a broken leg (131-112, 154+790). Damages, \S 131(2).

\$11,000 held not excessive for injuries to a workman on a coal dock, earning from \$60 to \$90 per month, whose right thigh was fractured, and his leg shortened and rendered practically useless (128-178, 150+810). Damages, \S 132(6).

A verdict for injuries to a young woman 26 years of age, as a result of which she contracted a disease which compelled the use of a crutch, held not excessive (126-509, 148+568). Damages, \S 132(6).

\$5,000 held not excessive for injuries to a laborer 29 years old, whose leg was shortened and permanently weakened (124-466, 145+385). Damages, \S 132(6).

\$5,960 held not excessive for injuries to a salesman earning \$40 per week, who was an educated musician; his leg being permanently impaired, resulting in hernia and neurasthenic condition (125-102, 145+791). Damages, \S 132(6).

A verdict of \$2,500 for injuries to a man of 72, consisting of a fracture of the hip and two ribs, which compelled the use of crutches to the time of the trial, two years after the accident, held not excessive (124-155, 144+462). Appeal and Error, \S 1001(1); Damages, \S 132(6).

A verdict for \$4,000 held not excessive for injuries consisting of a compound dislocation of the left ankle joint with a fracture of the tibia, resulting in a permanent injury of a workman earning 45 cents an hour (124-19, 144+431). Damages, \S 132(6).

\$5,000 held excessive for injuries to a farmer's wife, she having suffered a broken ankle, which has healed, but left the ankle weak and freedom of motion impaired; reduced to \$3,000 (124-169, 144+745). Damages, \S 132(6).

\$7,000, reduced by trial court to \$6,000, held not excessive for injuries to a laboring man 24 years old, whose knee was permanently stiffened, and who suffered great pain and incurred expenses for medical services and nursing in the sum of over \$1,300 (128-329, 151+124). Damages, \S 132(6).

A verdict for \$20,000, reduced to \$15,000 by the trial court, for injuries to a fireman 40 years of age, consisting of a T fracture of the leg, and other injuries making him a permanent cripple and unable to work, he having earned \$110 per month before his injuries, held not excessive (135-229, 160+787). Damages, \S 132(6).

Injury to legs and arms in connection with other injuries—For injuries consisting of a paralyzed and atrophied arm, which will probably require amputation, a compound fracture of the left leg causing a shortening of six inches, which, with other injuries to the leg renders it useless, and also injury to the head impairing hearing and sight, a verdict of \$50,000, reduced by the trial court to \$35,000, was not excessive; plaintiff being 28 years of age and earning \$28 a week before his injury (135-372, 160+1020). Damages, \S 132(7).

Injuries to arm hand or fingers—Verdict for \$1,250 for an assault and battery, resulting in a permanent shortening and stiffening of the thumb, held not excessive; loss of time and expense incurred amounting to \$350 (133-23, 157+717, L. R. A. 1916E, 896). Assault and Battery, \S 40.

A verdict for \$4,250 for permanent injury to a brakeman's left arm and shoulder, preventing him from again following his occupation, held not excessive (131-236, 154+1075). Damages, \S 132(8).

\$12,000 held not excessive for injuries to girl of 17, where her right hand and forearm were disfigured and rendered useless (128-245, 150+804). Damages, \S 132(8).

Loss of leg or foot—\$30,000 held not excessive for loss of a leg by a switch foreman, 26 years old, earning from \$105 to \$115 per month; the injury causing amputation so close to the hip that an artificial limb could not be used, and the healing of the stump was difficult and exceedingly painful (128-283, 150+922). Damages, \S 132(9).

\$24,750, for loss of leg by brakeman, held not excessive (121-326, 141+800). Damages, \S 132(9).

\$15,000 held excessive for loss of a foot by a farmer 48 years old, and reduced to \$12,000 (125-33, 145+626, 51 L. R. A. [N. S.] 660). Damages, \S 132(9).

A verdict for \$30,136.67, reduced by the trial court to \$25,000, held not excessive for injuries received by a person at a highway crossing; the injuries consisting of loss of the right arm and leg, with several teeth, and being accompanied with other minor hurts (124-368, 145+40). Damages, \S 132(9, 12).

Loss of both legs—\$22,500 held not excessive for loss of both legs halfway between ankle and knee by a boy 12 years old (129-101, 151+894). Damages, \S 132(11).

Loss of arms—A verdict of \$39,000 held not excessive for the loss of both arms and a leg by a railroad brakeman (127-1, 148+446). Damages, \S 132(11, 12).

A verdict, reduced by the trial court to \$10,000, for loss of the right arm at the elbow, by a man nearly 60 years old, earning \$120 per month, held not excessive (130-405, 153+848). Damages, \S 132(12).

Loss of fingers—\$2,000 held not excessive for loss of the little finger of the left hand at the knuckle joint and the next finger at the second joint, by a left-handed workman 35 years old (127-507, 150+175). Damages, \S 132(13).

\$1,500 held not excessive for permanent injury to a brakeman's thumb, rendering it practically useless (125-7, 145+613). Damages, \S 132(13).

Loss or impairment of sight—A verdict for \$11,375, reduced by trial court to \$9,000, held not excessive for injuries to a railroad employé, consisting of loss of one eye, fracture of jawbone, and permanent disfigurement of face (124-1, 144+466). Damages, \S 132(14).

ERRORS OF LAW ON THE TRIAL

What are errors on the trial—Submission of issue not supported by evidence is ground for new trial (128-460, 151+275). Appeal and Error, \S 1066.

Where the charge, in a complicated case, fails to define or outline the issues of fact, a new trial will be granted (123-17, 142+930, L. R. A. 1915B, 1179, 1195). Trial, \S 203(2).

Instruction, in action on fire policy held to be without error justifying a new trial (123-825, 143+787). Insurance, \S 669(9); Trial, \S 296(1).

In an action for malicious prosecution of an attachment suit, error in admitting in evidence a part of the record in a subsequent suit between plaintiff and one of the defendants, in which plaintiff recovered damages for breach of a contract, which breach existed at the time of the suing out of the attachment, and might have been used as a counterclaim, justified the awarding of a new trial (123-435, 143+1124). Malicious Prosecution, \S 60(1).

The discretion of the trial court in granting a new trial for prejudicial error in instructions will not be disturbed, unless the order was clearly without substantial foundation for the conclusion of prejudice (130-285, 153+596). Appeal and Error, \S 977(3).

Exclusion of evidence, not shown to be material when offered, is not ground for new trial (122-39, 141+847). Appeal and Error, \S 205.

The giving of a "supplemental charge," after the jury had retired, of such a persuasive nature as to indicate the court's opinion as to what the verdict should be, was ground for new trial (129-531, 152+269). New Trial, \S 39.

Where assumption of risk was neither pleaded nor litigated with the consent of the parties, error in submitting that issue to the jury was ground for new trial (129-324, 152+755). New Trial, \S 38.

Reception of incompetent evidence bearing on one issue of the case held not ground for new trial, where a special finding of the jury on other issues in the case shows that a recovery could not be had, no matter how the issue concerning which the evidence was offered was decided (127-425, 149+672). Appeal and Error, \S 1052(8), 1053(5).

Where two causes of action are tried as one, and the verdict rendered may include damages for both causes, error in an instruction relating to one of the causes requires a new trial (127-490, 150+218). New Trial, \S 39.

An instruction as to contributory negligence, not warranted by the evidence, held ground for new trial (129-8, 151+423). Trial, \S 253(9).

Error in instructions, where verdict is correct (121-258, 141+164, L. R. A. 1915D, 644).

Time for making motion for new trial—After affirmance of a judgment on appeal without motion for new trial, and after the lapse of six months, a motion for new trial on the ground of errors occurring at the trial will not lie (134-292, 159+623). New Trial, \S 4.

Necessity of exceptions—Verbal inaccuracies in the recital of certain evidence in the charge, to which the trial court's attention was not called before the jury retired, do not ordinarily furnish ground for a new trial (130-434, 152+262; 130-434, 153+736). New Trial, \S 40(3).

INSUFFICIENCY OF EVIDENCE

Under either subd. 5 or subd. 7—Right of appeal dependent on grounds alleged (see 128-488, 151+139). Appeal and Error, \S 110.

In an action to recover the reasonable value of legal services, the point that the damages awarded by the jury were inadequate was properly raised on a motion for new trial made on the ground that the verdict was not sustained by the evidence (136-320, 158+419). New Trial, \S 130.

In general—Where the pleadings and evidence make a case not submitted by the instructions, a new trial and not judgment notwithstanding the verdict is the proper remedy (129-432, 152+840). Judgment, \S 199(1).

Where the trial court makes a general order granting a new trial on the ground that the verdict is not justified by the evidence, such order will not be reversed, unless the evidence is manifestly and palpably in favor of the verdict (124-84, 144+450). Appeal and Error, \S 1015(3).

The Supreme Court should not grant a new trial unless the evidence is so manifestly and palpably against the verdict that the trial court violated a clear right of defendant and abused its discretion in refusing a new trial (123-480, 144+149, 49 L. R. A. [N. S.] 756). Appeal and Error, \S 1005(2).

A new trial should be granted, where the verdict is based on uncertain evidence and the prevailing party changed his theory of his case during an intermission in the trial (123-492, 144+187). New Trial, \S 66, 68.

The trial court's discretion in awarding a new trial will not be disturbed on appeal, where the evidence is not manifestly and palpably in favor of the verdict (123-530, 143+1123). Appeal and Error, ¶979(2).

After the affirmance of a judgment on appeal without motion for new trial, and after the lapse of six months from notice of the entry of judgment, a motion for new trial on the ground of insufficiency of the evidence will not lie (134-292, 159+623). New Trial, ¶4.

A verdict on convicting evidence is binding upon the supreme court, if reasonably supported by the evidence (125-534, 147+426). Appeal and Error, ¶1002.

The award of a new trial on the ground of the insufficiency of the evidence to support the verdict will not be disturbed on appeal, unless the discretion is abused (122-530, 142+1134). Appeal and Error, ¶979(2).

The supreme court should not interfere with the trial court's findings, except where they are manifestly without support in the evidence, though the case was submitted on written evidence alone (126-52, 147+827). Appeal and Error, ¶1005(2).

Finding of trial court will not be disturbed, unless palpably against the weight of the evidence (122-295, 142+710). Appeal and Error, ¶1012(1).

Where the motion is made on the ground that the verdict is contrary to law, it should be granted if the verdict is not supported by the evidence (122-463, 142+729). New Trial, ¶70.

The findings of the trial court must be clearly against the evidence to justify the supreme court in interfering therewith, whether the fact found be required to be established by a preponderance of the evidence, or by clear, convincing, and satisfactory proof (128-106, 150+387). Appeal and Error, ¶1011(1).

Memorandum—Where the trial court, on granting a new trial, fails to state that the order was made on the ground of the insufficiency of the evidence, this ground of motion cannot be considered (122-463, 142+729). Appeal and Error, ¶933.

After successive verdicts—After two verdicts for plaintiff, the discretion of the court in granting a new trial for insufficiency of evidence should be exercised with caution (123-72, 145+798). New Trial, ¶78(1).

Of less than all the issues—In a will contest, the fact that the issues of mental capacity and undue influence were intimately connected, and the evidence upon one would have more or less bearing upon the other, held not to render erroneous an order granting a new trial as to one of the issues alone (126-275, 148+117). Wills, ¶337.

Actions relating to contracts—Evidence held to sustain decision that defendant did not purchase goods from plaintiff (122-17, 141+789).

Evidence held not clearly against the findings of the trial court that a deed was executed and accepted in full performance of an executory contract, and that conditions imposed by such contract on the vendor were waived or abandoned by mutual consent (126-359, 148+121). Vendor and Purchaser, ¶350.

In an action for breach of promise to marry, evidence held to sustain the finding that such promise was made (126-350, 148+500, Ann. Cas. 1915D, 491). Breach of Marriage Promise, ¶23.

Finding of the trial court that corporate stock was of such uncertain value as to warrant specific performance of a contract to purchase same, instead of an award of damages for breach of the contract (128-341, 150+1084). Specific Performance, ¶121(3).

Evidence held to support verdict to the effect that plaintiff's disability resulted from an accident within an accident policy, and that notice and proof of injury were waived by defendant (124-478, 145+395). Insurance, ¶665(5, 8).

Findings of the trial court as to the extent of partial failure of consideration for the agreement sued on held sustained by the evidence (125-343, 147+111). Appeal and Error, ¶1011(1).

Evidence held to sustain a judgment for plaintiff against a fire department relief association for benefits to which plaintiff was entitled under the by-laws of the association (124-381, 145+35, 50 L. R. A. [N. S.] 1018). Appeal and Error, ¶1005(2).

Evidence held to support finding of jury that the guarantor of a note knew that one of the makers was to be released from liability on the note (124-411, 145+124). Guaranty, ¶16(1).

Evidence held to support verdict finding agreement to sell interest in partnership at a price to be ascertained by inventory (125-122, 145+808).

Evidence held to sustain findings of the trial court that defendants were chargeable on a contract of promoters of a projected corporation (125-59, 145+617). Corporations, ¶269(3).

Evidence held insufficient to support findings of court in action for breach of agency contract (122-66, 141+1097). Brokers, ¶39.

In action on notes, in which defendant counterclaimed for services as broker, evidence held to support findings of the trial court for defendant (124-140, 144+452). Brokers, ¶86(1).

Evidence held to support verdict to the effect that note had been paid (121-458, 141+525). Bills and Notes, ¶527(1).

Evidence in action for specific performance of oral contract to convey property held insufficient to sustain findings of trial court (124-114, 144+744). Specific Performance, ¶121(3).

Evidence held insufficient to sustain finding of trial court that an oral agreement to convey land was entered into (125-49, 145+615). Specific Performance, ¶121(3, 4).

Evidence as to mental capacity of testator—Evidence as to the mental capacity of a testator held not so clearly and palpably against a verdict as to justify the supreme court in not reversing an order denying a new trial (126-275, 148+117). Wills, ¶400.

Evidence of death—Evidence of disappearance of insured, and of his absence for more than seven years, and of search made for him, held to sustain a finding of the jury that he was dead (125-150, 145+806). Death, ¶4.

Boundary disputes—Evidence in a boundary dispute held insufficient to support verdict for plaintiff (124-233, 144+758). Adverse Possession, ¶114(2); Boundaries, ¶37(3).

Evidence held to sustain finding of a trial court that there was a practical location of a boundary line (125-365, 147+241). Boundaries, ¶37(3).

Findings of court as to practical location of boundary line held supported by the evidence (129-522, 151+273). Boundaries, ¶37(3).

Adverse possession—Evidence held to sustain a finding against a claim of title by adverse possession (125-484, 147+655). Adverse Possession, ¶24, ¶64.

Evidence held to sustain a finding that defendant's possession was not adverse (125-24, 145+404). Adverse Possession, ¶85(3).

Criminal acts—Evidence held to support a verdict under § 3200 for illegal sale of intoxicating liquors to plaintiff's minor son (121-455, 141+803).

Torts in general—Evidence in action against physician for malpractice held to support a verdict for plaintiff (123-319, 143+793, Ann. Cas. 1915A, 257). Physicians and Surgeons, ¶18(8).

Evidence held insufficient to support verdict for plaintiff in action for malicious prosecution (129-97, 151+895, Ann. Cas. 1916E, 374). Malicious Prosecution, ¶64(2).

Finding that no probable cause existed for a prosecution, alleged to have been malicious, held against the weight of the evidence (122-241, 142+196). Malicious Prosecution, ¶18(2).

Evidence held to support finding for plaintiff in action for pollution of spring (122-510, 142+885). Waters and Water Courses, ¶107(1).

Findings held to sustain conclusions of law that defendant converted moneys of plaintiff, that a contract between such parties should be canceled, and that plaintiff was not guilty of breach of the contract entitling defendant to damages (126-340, 148+123). Vendor and Purchaser, ¶93.

Fraud and undue influence—A finding of the district court that a will was procured by undue influence will not be disturbed by the supreme court, unless it is manifestly contrary to the evidence (129-523, 151+529). Wills, ¶386.

Evidence held to support finding that deed was procured by undue influence (128-251, 150+809). Deeds, ¶211(4).

Evidence held to support finding of fraud inducing contract for sale of land, warranting rescission (122-295, 142+710). Vendor and Purchaser, ¶123.

Evidence held to justify a finding that the release of plaintiff's cause of action was procured by defendant's fraud (126-350, 148+500, Ann. Cas. 1915D, 491). Release, ¶57(2).

Evidence held to sustain finding of a trial court that a deed from father to daughter was in fraud of creditors (126-141, 147+958). Fraudulent Conveyances, ¶295(1).

Evidence held to sustain a verdict for damages for false representations in the sale of a stallion (124-265, 144+954). Fraud, ¶58(2).

Evidence held to justify a finding that all the defendants were liable for fraudulent representations inducing a purchase of land (126-119, 147+1097). Vendor and Purchaser, ¶44.

In action on note, evidence held to support finding of jury that plaintiff made false representations as to soundness of oranges for which note was given (125-134, 145+803). Sales, ¶181(12).

Negligence—Evidence held to sustain verdict against railroad company for injury to brakeman under federal safety appliance act (121-413, 141+798, Ann. Cas. 1914D, 383). Master and Servant, ¶243, 278, 289.

Evidence held insufficient to support a verdict for injuries to a farm laborer, resulting from the alleged negligence of his employer in furnishing him with an unruly and unsafe team (128-213, 150+786). Master and Servant, ¶273(1).

Evidence held to support a verdict against defendant for negligence in operating a taxicab (122-363, 142+716). Master and Servant, ¶278(3), 280, 281(5).

Evidence held to sustain verdict against master for injuries to servant (122-415, 142+804). Master and Servant, ¶288(2), 289(4).

A verdict finding that a structure built to prevent the walls of an excavation from falling in upon the workmen was improperly and negligently constructed and braced held sustained by the evidence (126-355, 148+119). Master and Servant, ¶278(3).

Evidence held insufficient to sustain a finding that a driver of a team was negligent in causing a collision with plaintiff (125-469, 147+427). Master and Servant, ¶330(3).

Verdict for employé of garage, injured by falling into a newly dug pit, held supported by the evidence (129-70, 151+537).

Evidence as to negligence of employer in failing to keep automatic elevator gates in proper order held to support verdict for plaintiff in action for wrongful death of employé (129-77, 151+541). Master and Servant, ¶286(18).

A finding of negligence resting wholly on speculation and conjecture cannot be sustained (125-78, 145+786). Master and Servant, ¶265(9).

Evidence, in action for wrongful death of an employé, held to support findings of jury as to cause of death, negligence, contributory negligence, and assumption of risk (129-81, 151+530). Master and Servant, ¶276(2), 280.

In an action for injuries to a brakeman, caught between the engine tender and poles projecting from a car, evidence held insufficient to show that the injury resulted from movement of the engine, for which alone defendant would be liable (124-487, 145+393). Master and Servant, ¶276(2).

Evidence held to sustain a verdict for injuries to an employé on an issue of negligence and contributory negligence (124-466, 145+385). Master and Servant, ¶276(3).

Evidence held to support a finding of the jury that an employer was negligent in failing to warn an inexperienced employé as to the dangers incident to the use of machinery (124-141, 144+751). Master and Servant, ¶153(1).

Evidence held to sustain a verdict for injuries to an employé of a railroad company while engaged in sweeping out a box car, resulting from negligence in switching operations (123-178, 143+324). Master and Servant, ¶278(18).

Evidence held to show that plaintiff's daughter was lawfully in a building as a subtenant at the time the building was destroyed by fire resulting from the negligence of the landlord (126-149, 148+110). Landlord and Tenant, ¶169(7).

Evidence held to sustain a verdict against a landlord for death of a subtenant, resulting from the destruction of the building by fire (126-144, 148+108). Landlord and Tenant, ¶169(7).

Evidence held insufficient to support a finding that a landlord was negligent, rendering him liable for injury to the tenant's goods from water leaking from the ceiling (121-505, 141+835). Landlord and Tenant, ¶169(7).

Evidence held insufficient to sustain a finding of the jury that an engineer of a train standing at a crossing willfully and wantonly backed the train with knowledge that plaintiff was attempting to climb through the train (125-155, 145+799). Railroads, ¶348(11).

Evidence held to support verdict against railroad company for injuries to person on track (129-101, 151+894). Railroads, ¶398(3).

Evidence held to support verdict against railroad company for destruction of property by fire set out by locomotive (121-439, 141+523). Railroads, ¶482(1).

Evidence held to sustain verdict against railroad for injuries at crossing (122-102, 141+855). Railroads, ¶350(1).

Evidence held to support a verdict against a railroad company for injuries resulting from negligence in running a train at a crossing (122-44, 141+854). Railroads, ¶348(3).

Evidence held to support verdict against railroad company for death of trespasser on track under last clear chance rule (129-142, 151+896). Railroads, ¶398(3, 4).

Evidence held to support a verdict for death of plaintiff's intestate at a railroad crossing, and finding against defendant's contention that the facts shown overcame the presumption of due care on the part of deceased (123-279, 143+722). Railroads, ¶348(6).

Evidence held to sustain verdict that defendant's negligence in running an automobile caused injuries to plaintiff, a passenger therein (125-431, 147+434). Carriers, ¶318(5).

Evidence held to sustain a verdict against a railroad company for injuries to a shipment of live stock (126-259, 148+112). Carriers, ¶228(5).

Evidence held to justify finding that defendant railroad company was negligent in the care of live stock unloaded in the course of transportation (123-495, 144+220). Carriers, ¶230(4).

Evidence in action for injuries to passenger held to support verdict for plaintiff (128-193, 150+800).

Evidence as to contributory negligence of driver of automobile truck, with which a street car collided, held to support findings of the trial court (125-399, 147+430). Appeal and Error, ¶1010(1).

Evidence held to sustain a verdict for defendant in an action against a street railway company for injuries resulting from a collision with an automobile (126-168, 148+61). Appeal and Error, ¶1002.

In an action for personal injuries inflicted by a vicious cow, evidence held to support a verdict for plaintiff on the issues of negligence and contributory negligence (128-232, 150+897). Animals, ¶74(5).

Evidence held insufficient to justify recovery for negligence of a logging corporation in conducting a drive of logs, in consequence of which the logs were permitted to come in contact with the river bank, thus injuring plaintiff's riparian rights (127-8, 148+517). Navigable Waters, ¶39(6).

In an action for personal injuries, held, that there was no abuse of discretion in denying a new trial on the ground of the insufficiency of the evidence to sustain a verdict for plaintiff (161+400). New Trial, ¶70.

Evidence held to sustain a finding of the jury of negligence of a master causing injury to a servant and that a release executed by the servant was obtained by fraud (123-516, 144+407). Release, ¶57(2).

Evidence held to sustain a finding of the jury as to the cause and extent of injuries received by a shipper of live poultry owing to mismanagement of the train (123-173, 143+322). Evidence, ¶589.

In case of a collision of an automobile with a street car, held, that contributory negligence of the driver of the automobile was not shown by the evidence (125-308, 146+1107). Street Railroads, ¶114(15).

Other actions—Evidence, in action for accounting between persons engaged in a joint adventure for the purchase of a mine, held to support the findings of the court (122-448, 142+876). Joint Ventures, ¶5(2).

In an action by the state to recover from a purchaser of pine timber for a deficiency in the scaling of the timber as shown by a rescale, held, that findings of trial court are sustained by the evidence (122-400, 142+717). Public Lands, ¶16.

Evidence held to support a finding by the jury that a scale made by a purchaser of timber was incorrect, and that a subsequent scale made by a deputy surveyor general was correct (125-15, 145+402). Logs and Logging, ¶8(5).

Evidence held to support findings of court that delay in furnishing last items was not for the wrongful purpose of extending the time for perfecting mechanic's lien (124-132, 144+472). Appeal and Error, ¶1009(2).

Evidence held to sustain findings that defendants were innocent purchasers for value of land which the mortgage sought to be foreclosed purported to cover (123-367, 143+917). Vendor and Purchaser, ¶244.

VERDICT CONTRARY TO LAW

In an action to recover for services, in which the court charged as to agreed price, and not as to reasonable value, as to which there was evidence, a verdict based on an agreed price, but without evidence to support it, is contrary to law and is not supported by the evidence (131-13, 154+514). Master and Servant, ¶80(15).

That parts of a finding of fact may be immaterial does not require a new trial (132-321, 156+848). New Trial, ¶61.

Where the verdict is not justified by the evidence, the awarding of a new trial is discretionary; but it is otherwise where the ground is that the verdict is contrary to law (122-463, 142+729). New Trial, ¶66, 70.

7829. Basis of motion—

Effect on appeal of failure to file bill of exceptions—In the absence of a settled case or bill of exceptions, all questions covered by the findings will be presumed to have been litigated by consent (131-249, 154+1072). Appeal and Error, ¶907(3).

Failure to serve notice in time—Waiver—Failure to serve a notice of motion within time is deemed waived, where the notice is served personally, but is not returned for being too late (129-528, 152+270). New Trial, ¶121.

When motion may be made—A party may make a motion for a new trial, after entry of judgment, if without fault on his part he has had no reasonable opportunity to make the motion before judgment, and if he uses reasonable diligence in doing so afterwards. The question of diligence is in the sound discretion of the trial court (125-475, 147+654). New Trial, ¶116(3), 124(1).

When settled case or bill of exceptions is necessary—Where a new trial is granted upon a motion based upon the minutes and upon affidavits, the appellate court will not reverse, unless a settled case or bill of exceptions is contained in the record (126-90, 147+716). Appeal and Error, ¶544(1).

A settled case or bill of exceptions is not necessary to review an order disposing of a motion for a new trial on the ground that by a clerical error of the jury a verdict the very opposite of the one agreed on was returned; affidavits of all the jurors supporting the ground alleged being returned (135-13, 159+1070). Appeal and Error, ¶544(1).

Time for motion on the minutes—A motion for new trial on the court's minutes is in time when made and heard the day after the rendition of the verdict (134-266, 159+564). New Trial, ¶117(1).

Several defendants—Parties necessary in motion—To entitle a defendant to urge as error the direction of a verdict in favor of a codefendant, the latter must be made a party to the motion for a new trial, when the motion is based in part upon the claim that the court erred in so directing a verdict (132-195, 156+272). Appeal and Error, ¶327(5).

7830. Exceptions—Notice of motion for new trial—

131-13, 154+514.

In general—Where a party is served with a short notice of an interlocutory motion, he should apply to the court to vacate the service or be relieved from default in order to raise the question on appeal (125-475, 147+654). Appeal and Error, ¶189(1).

Where a judgment for plaintiff in an equity suit fails to contain a provision favorable to defendant and authorized by the findings, the remedy of defendant is by motion and not by appeal (134-39, 158+810). Appeal and Error, ¶9.

Where a demurrer was overruled, and judgment was entered for plaintiff without notice, but no application was made to the trial court for leave to answer or vacate the judgment, the question whether defendant was entitled to answer or to have the judgment vacated cannot be considered upon appeal (126-367, 148+306). Appeal and Error, ¶224.

Construction of findings, in absence of motion for new trial or to amend findings (see 127-580, 149+1070).

Where proof is sought to be elicited on cross-examination, and is excluded, it is not necessary to make an offer of proof to present the question for review (126-239, 148+102, Ann. Cas. 1915D, 888). Appeal and Error, ¶205.

Necessity for exception to or specification of errors in motion—Necessity of exception or presentation of question in motion for new trial (121-243, 141+120). Appeal and Error, ¶263(1).

Failure in the trial court to raise the question of the applicability of the fellow servant rule precludes consideration of that question on appeal (133-73, 157+993). Appeal and Error, ¶173(13).

Errors assigned upon rulings at the trial cannot be considered on appeal, unless excepted to at the time or specified in the motion for new trial; and this rule applies to instructions (131-320, 155+205). Appeal and Error, ¶301, 727.

Objections to improper remarks or conduct of counsel, not assigned as a ground of new
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trial, cannot be considered for the first time on appeal (130-80, 153+269). Appeal and Error, ¶207.

Alleged misconduct of counsel, not urged in the motion for new trial, cannot be considered on appeal (130-229, 153+532, Ann. Cas. 1916C, 267).

Where no objection was made at the time to alleged misconduct of plaintiff, made a ground of the motion for new trial, complaint of such misconduct could not be made on appeal (162+464). Appeal and Error, ¶201(1).

Where errors were assigned to rulings on evidence, but no exceptions were taken thereto, and such errors were not specified in motion for new trial, they were not reviewable (162+464). Appeal and Error, ¶260(1).

Rulings to which no exception was taken at the trial nor by motion for a new trial cannot be reviewed on appeal (162+353). Appeal and Error, ¶248.

Evidence received without objection will be considered as before the court on appeal (128-307, 150+903).

Allowance of fee paid expert witness on taxation of costs in lower court cannot be objected to for first time on appeal (128-449, 151+274). Appeal and Error, ¶226(2).

Question of excessive damages, not made a ground for new trial, will not be considered on appeal (129-70, 151+537).

Assignments of error in rulings on evidence and in instructions cannot be considered, where they are not founded on exceptions taken at the trial or in the motion for a new trial (129-529, 152+270). Appeal and Error, ¶306.

Grounds for new trial, not assigned in the trial court, will not be considered on appeal (129-353, 152+725). Appeal and Error, ¶301.

Where no exception was taken to the refusal to give requested instructions, and no error in this regard was assigned in the motion for new trial, the action of the court will not be reviewed on appeal (123-325, 143+787). Appeal and Error, ¶263(3).

Assignment of error in admission of testimony will not be considered, where such objection is not contained in the motion for new trial (122-533, 142+1134). Appeal and Error, ¶289.

Where plaintiff's attorney called defendant's counsel and interrogated him as a witness as to the whereabouts of defendants and why they were not in court, so that they could be called for cross-examination, and defendants' counsel objected, but did not reserve exceptions to the rulings, either at the trial or on motion for new trial, there is nothing for review on appeal (161+167). Appeal and Error, ¶301.

Objection to admission of communications with person since deceased held sufficient to present the question for review (128-17, 150+213, L. R. A. 1916C, 1214, Ann. Cas. 1916D, 1101). Wills, ¶297(1).

Necessity for motion for a new trial—Where there is no motion for new trial, the only matter for review on appeal is the sufficiency of the evidence to support the verdict (132-307, 156+346). Appeal and Error, ¶281(1).

A motion for judgment notwithstanding the verdict is not appealable, unless the denial thereof is followed by a motion for new trial (132-467, 155+1039). Appeal and Error, ¶109.

Motion for judgment notwithstanding verdict is a waiver of all errors which would have been ground for new trial, unless the motion is in the alternative for judgment or for new trial (128-514, 151+419, L. R. A. 1915D, 1077; 129-25, 151+421). Appeal and Error, ¶289, 292; New Trial, ¶10.

Where the motion for new trial is limited to the grounds of insufficiency of evidence and excessiveness of the verdict, alleged errors in admission of evidence and instructions cannot be considered on appeal (135-476, 160+79). Appeal and Error, ¶302(1).

Where no exception to the charge is taken in the motion for new trial, the instructions must be taken on appeal as the law of the case (128-270, 150+919). Appeal and Error, ¶215(1).

What the record should contain on appeal—An order denying a motion made upon all the files and records in the action will be affirmed, unless the record contains a settled case or bill of exceptions, or a certificate of the trial judge that the record contains all that was presented or considered on the motion, or a certificate of the clerk that the record contains all the files and records in the case (123-290, 143+741). Appeal and Error, ¶671(1).

Necessity of discussing errors in the brief—Assigned errors, not discussed in the brief, will not be reviewed (122-419, 142+721). Appeal and Error, ¶366.

What matters may be raised for the first time on appeal—Where the findings of fact are insufficient to support the conclusions of law the defeated party may raise the question for the first time on appeal, and need not move in the trial court for an amendment of the findings (128-5, 150+216).

What matters may appellee raise on appeal—On appeal by defendant from an order granting a new trial plaintiff may point out other errors occurring at the trial, and properly raised, than those for which the new trial was awarded (134-192, 158+967). Appeal and Error, ¶854(6).

Necessity of stating ground of exception or objection—Where the record does not show on what grounds appellant opposed the confirmation of a receiver's sale, and the impropriety of the order is not apparent there is nothing to review (134-422, 159+948). Appeal and Error, ¶684(3).

A party will not be permitted to review rulings in admitting evidence, unless he has advised the trial court of his ground of objection (127-84, 148+891).

Instructions not objected to—An instruction fundamentally wrong, or which has the effect of preventing a verdict for a substantial amount on a cause of action well pleaded, may be assigned as error on motion for new trial, though no exception is taken at the trial; but

it is otherwise with respect to inaccuracies of expression and inadequate treatment of the controversy (125-441, 147-445, 52 L. R. A. [N. S.] 1176). New Trial, Ⓒ40(4).

Where an erroneous instruction relates to a controlling proposition of law in the case, it is not cured by other portions of the charge, and the injured party, in view of this section, is not bound to call it to the attention of the court at the trial, in order to obtain a review on appeal (135-1, 159+1069). Appeal and Error, Ⓒ263(2).

Instructions to the jury, not excepted to, while for some purposes the law of the case, do not furnish the test by which the admissibility of evidence is to be determined (162+520). Appeal and Error, Ⓒ853.

Unchallenged instructions held the law of the case on appeal (121-455, 141+803). Appeal and Error, Ⓒ853.

Verbal inaccuracies in instructions, to which the court's attention is not called before retirement of the jury, are not ordinarily ground for new trial (130-434, 152+262; 130-434, 153+736). New Trial, Ⓒ40(3).

Defendant in a criminal case cannot permit the court in its charge to misstate his position, and, without calling the court's attention thereto, found error thereon (123-276, 143+782). Criminal Law, Ⓒ847.

Where an instruction contains misstatements or omissions due to inadvertence, it is the duty of the party complaining to request a correct instruction, and this rule is not affected by 1901 c. 113 (125-466, 147+441). Trial, Ⓒ287.

Where one contesting a will did not object in the trial court to an instruction, but on the contrary stated that the instructions were entirely satisfactory, he could not complain on appeal (126-275, 148+117). Wills, Ⓒ336.

The failure of the trial court to expressly call the attention of the jury to the degree of care imposed upon defendant in respect to the maintenance of the right of way fence was an inadvertence, and since no exception was taken at the trial, is not reversible error (162+469, following and applying 101-12, 111+651, 11 L. R. A. [N. S.] 228, 11 Ann. Cas. 429). Appeal and Error, Ⓒ263(3).

Objections to evidence when necessary—Where no objection was made to the questions asked a witness, objection cannot be made on appeal to the answers given in response to such questions (126-206, 148+113).

7831. "Bill of exceptions" and "case" defined—

A verdict is one of the "papers properly filed by the clerk," and is part of the record proper, and should be excluded from the settled case (127-15, 148+476). Trial, Ⓒ342.

7832. Bill of exceptions or case, how and when settled—

In general—The prevailing party in the trial court held not entitled to propose and have settled a record containing the evidence and proceedings on the trial, where the court on appeal could not consider the same (134-276, 159+566). Appeal and Error, Ⓒ516.

Suspension of sentence for a definite period held proper, and within the discretion of the court (125-529, 147+273). Criminal Law, Ⓒ1001.

When case may be settled and allowed—Discretionary—The granting or refusing of a motion for leave to settle a case after the time limited by this section will not be disturbed on appeal, in the absence of a clear abuse of discretion (128-537, 150+924). Appeal and Error, Ⓒ956(2).

The trial court may settle and allow a case after an appeal has been taken from an order denying a new trial (127-533, 149+550). Appeal and Error, Ⓒ567(1).

Where the statutory time for settling a case has expired, the appellant must excuse the default and appeal to the discretion of the trial court (161+782). Appeal and Error, Ⓒ567(2).

That a cause has been removed to the supreme court by appeal, and that by such removal some of the exhibits could not be made a part of the case, did not deprive the trial court of jurisdiction to settle a case (161+782). Appeal and Error, Ⓒ571.

The court may extend the time for settlement of a case after the time has expired, whether the case is to be settled by the trial judge or, in the event of his disability, by another judge (125-475, 147+654). Appeal and Error, Ⓒ567(2).

Time of notice—The time of notice of an application for settling a case, as prescribed by § 7832, may be shortened by an order to show cause under § 7749 (125-475, 147+654). Appeal and Error, Ⓒ568.

Waiver of late service—Retention of a proposed case is not a waiver of the objection that it was not served in time (128-537, 150+924). Appeal and Error, Ⓒ644(2).

Amendment—Objection to amendment of a settled case held insufficient to present the question, where an amendment was precluded by the perfection of the appeal (124-317, 145+37). Appeal and Error, Ⓒ232(1).

After settlement of a case, denial of a motion made on affidavits to add certain testimony not appearing in the minutes of the official stenographer held not error (135-477, 160+247). Appeal and Error, Ⓒ648.

Effect where there is no bill of exceptions or case—On an appeal from a judgment where there is neither a bill of exceptions nor a settled case, the only matter that will be considered is whether the findings sustain the judgment (162+1073). Appeal and Error, Ⓒ644(2).

In absence of settled case, the findings of the trial court are presumed to be within the issues litigated, whether such findings are within the pleadings or not (129-156, 151+910). Appeal and Error, Ⓒ931(1).

An appeal will be dismissed, where appellant's grievances relate solely to alleged defects in the evidence and instructions, and there is no settled case or bill of exceptions (127-520, 148+1081). Appeal and Error, ¶554(2).

Mandamus to require settlement—Where the trial judge considers, and denies on its merits, an application to settle a case after the statutory period, the supreme court cannot afford relief by mandamus, especially where there is no abuse of judicial discretion on the part of the district judge (132-146, 155+905). Appeal and Error, ¶571.

Mandamus will not lie to require the trial court to allow and settle a case after expiration of the time fixed therefor, where the denial is not shown to be an abuse of discretion (124-537, 144+755). Appeal and Error, ¶571.

Cross-assignments of error—Cross-assignments of error are not permitted by the practice of this state (134-276, 159+566).

7833. Same—When judge incapacitated, etc.—

See note under § 7832.

Where the trial judge has vacated his office, another judge in the same district may hear a motion for a new trial (125-475, 147+654). New Trial, ¶114.

REPLEVIN

7834. Possession of personal property, how claimed—

Replevin does not lie against a joint owner or tenant in common (128-349, 150+1098). Replevin, ¶16.

Action between partners (see 129-525, 152+1101).

Return of partial payments, and demand, as condition precedent to replevin by conditional vendor (see 124-426, 145+164, 51 L. R. A. [N. S.] 251). Replevin, ¶11(1); Sales, ¶479(5).

7835. Affidavit—

Replevin will lie to recover property in the constructive possession of defendant, if the property is under defendant's control in the hands of another, so that defendant may deliver possession if he so desires (133-200, 158+41). Replevin, ¶10.

In replevin for an adding machine, finding of defendant's ownership of the machine held sustained by the evidence (162+1059). Replevin, ¶72.

In replevin for cordwood taken by defendant from several piles of wood on a tract of land, some of which piles belonged to plaintiff and others not, plaintiff had the burden of proving the identity of the wood claimed by him (123-525, 143+268). Replevin, ¶70.

Mere severance of trees standing on land in possession of plaintiff will not support replevin, but it is otherwise where defendant removes the logs from the land. Plaintiff, in possession of public land under the homestead laws, held entitled to maintain replevin for logs unlawfully cut and removed from the land by defendant (207 Fed. 40, 124 O. C. A. 600). Replevin, ¶9.

7838. Exception to sureties—Rebonding—

In an action for conversion, where plaintiff proves title, it is no defense that the property was taken under a writ of replevin from plaintiff's husband, and was returned to the husband on his rebonding it (127-177, 149+2). Trover and Conversion, ¶22.

ATTACHMENT

7845. When and in what cases allowed—

This section compared with § 7859 as to the necessity of a formal commencement of the action before the issuance of the writ (123-330, 143-792). Attachment, ¶71; Garnishment, ¶64.

7846. Contents of affidavit—

Subd. 4—A preferential transfer or payment without actual fraud does not constitute a disposition of property with intent to delay and defraud creditors, so as to authorize attachment under this section (124-112, 144+433). Attachment, ¶44.

Mere constructive fraud in a chattel mortgage from son to father covering a growing crop is not sufficient to support an attachment under this subdivision, an actual personal intent to defraud being necessary (130-141, 153+125). Attachment, ¶44.

The transfer contemplated by this subdivision is a transfer fraudulent as to creditors at common law or under the English statute (124-112, 144+433). Attachment, ¶44.

7847. Conditions of required bond—

A judgment of dismissal, entered under a stipulation of the parties settling and adjusting all matters in dispute between them, will not support an action on the bond given under this section, since such stipulation releases the surety, and since the statute, which is part of the contract, contemplates a judgment determining that plaintiff had no cause of action at the time of the levy. The rule as to collateral attack on a judgment is not involved (132-201, 156+5). Attachment, ¶331; Judgment, ¶516.

7849. Execution of writ—

A written contract held to constitute a sale of timber, and not a mere license, so that the estate and rights of the vendee, its contract being of record, were not effected by subsequent attachment and *lis pendens* against the interest of the timber vendor, nor by the latter's subsequent assignment of its land contract (126-176, 148+43). Vendor and Purchaser, [§79](#).

7853. Motion to vacate—

Upon motion to vacate an attachment, based on affidavits putting in issue the facts on which the writ was issued, the burden is upon plaintiff to sustain the allegations of the original affidavit, by competent evidence (135-469, 160+1024). Attachment, [§47\(2\)](#).

GARNISHMENT**7859. Affidavit—Garnishee summons—Title of action—**

There is a judgment on which garnishment may be based, though an appeal, without supersedeas, has been taken, and the affirmance of the judgment is based on the condition of the entry of a remittitur as to a part of the recovery, and the remittitur has not been filed (132-336, 156+668). Garnishment, [§7](#).

This section contemplates and requires, as essential to the right to proceed thereunder, that either the main action be pending or that it be commenced by issuing a valid summons at the time of the issuance of the garnishee summons (123-330, 143+792). Garnishment, [§64](#).

A guaranty insurance company held not liable as garnishee under a judgment against an assessor on an indemnity risk, when at the time of service of garnishee summons and when disclosure was made it held a valid claim for policy premiums against assured in excess of such judgment, though it defended the main action (124-339, 145+26). Garnishment, [§130](#).

7861. In district court—

Service by publication on defendant, and notice under § 7870 of motion for leave to file supplemental complaint against garnishee (see 133-326, 158+606; notes under §§ 7865, 7870).

7862. Effect of service on garnishee—Fees—

The interest of a creditor in an estate assigned for the benefit of creditors is subject to garnishment, and the garnishee summons impounds the interest of such creditor in the trust estate (130-392, 153+740). Assignments for Benefit of Creditors, [§184](#); Garnishment, [§31](#).

Though the right to money is complete, plaintiff cannot recover same, where it is subject to an undetermined garnishment (125-262, 146+1093). Abatement and Revival, [§8\(1\)](#).

A garnishment creditor gets nothing more than an inchoate lien, and this lien can be perfected only by proceeding to judgment against the garnishee in the manner provided by statute (124-254, 144+959). Garnishment, [§106](#).

An inchoate lien by garnishment cannot be tacked to a lien of an execution on the judgment against the defendant, and levied upon the indebtedness of the garnishee, so as to make up the period of four months specified by the bankruptcy act (124-254, 144+959). Bankruptcy, [§161\(1\)](#).

7863. Property subject to garnishment—

A surety company, participating in the defense of an action for personal injuries, may be made a garnishee as to the amount of the judgment under its bond of indemnity to the defendant (132-336, 156+668). Garnishment, [§42](#).

Where an assignee for the benefit of creditors is garnished by a creditor of a creditor entitled to participate in the assigned estate, the garnishee proceedings should be continued until the amount applicable to plaintiff's claim can be determined (130-392, 153+740). Action, [§68](#); Garnishment, [§31](#).

Bill of sale held not to vest title of personal property in claimant, so as to free the property from garnishment as the property of defendant (123-444, 143+1130). Garnishment, [§49](#).

An order for compensation for an attorney under § 8513, is neither a judgment, nor the amount thereof in custodia legis, but merely creates a county debt which is garnishable as such (126-264, 148+66). Garnishment, [§44](#), 58.

Compensation ordered under § 8513 in favor of an attorney for defending an indigent accused of crime is not exempt from garnishment as being fees of a public officer (126-264, 148+66). Garnishment, [§63](#).

7864. In what cases garnishment not allowed—

A beneficiary in an assignment for the benefit of creditors takes a vested and not a contingent interest in the estate of his debtor, and hence such creditor's interest is subject to garnishment, and the garnishment proceedings should be continued until the amount of such interest is determined (130-392, 153+740). Action, [§68](#); Garnishment, [§31](#).

An order for compensation for an attorney under § 8513 is neither a judgment, nor the amount thereof in custodia legis, but merely creates a county debt, which is garnishable as such (126-264, 148+66). Garnishment, [§44](#), 58.

7865. Examination of garnishee—

The filing of the affidavit of nonresidence of defendant, as provided for in this section, has the same effect that it had prior to the revision of 1905, notwithstanding § 7870, and such affidavit relieves plaintiff from the necessity of serving notice upon the defendant of an application for leave to file a supplemental complaint against the garnishee under § 7870 (133-326, 158+606). Garnishment, *§*99.

Service of summons by publication on a nonresident defendant gives jurisdiction to render a judgment binding upon him to the extent of the property impounded (133-326, 158+606). Judgment, *§*17(11).

7869. Claimant of property to be joined—

Evidence held insufficient to support a finding that a fund in bank standing in the name of the defendant in garnishment was in fact the property of a third person, so as to render the bank liable to such person on its deposit of the fund in court (128-455, 151+178). Garnishment, *§*218.

7870. Proceedings when debt or title is disputed—

Where a garnishee made disclosure that his liability to the defendant was on a contract of indemnity made in Nebraska, under the laws of which state no liability would accrue until the indemnitee had in fact suffered loss or damage by the payment of the claim from which he was protected, an issue of fact as to the law of Nebraska was presented, to be tried upon supplemental complaint under this section and plaintiff was not entitled to judgment on the disclosure (131-75, 154+739). Garnishment, *§*144.

The testimony of other witnesses may be received to supplement or explain the garnishee's disclosure. Evidence held sufficient to sustain finding discharging garnishee (129-188, 152+136). Garnishment, *§*163, 164.

A judgment cannot be rendered against a garnishee upon an unevasive disclosure, which does not affirmatively and clearly show liability on his part (129-188, 152+136). Garnishment, *§*180.

Bill of sale from defendant to claimant held not to transfer title from defendant, so as to discharge the property from liability for defendant's debts (123-444, 143+1130). Garnishment, *§*49.

The filing of the affidavit of nonresidence under § 7865 has the same effect as it had prior to the revision of 1905, and, notwithstanding the provision of this section as to service of notice on the garnishee and defendant, it relieves plaintiff of the necessity of serving notice upon defendant of an application for leave to file a supplemental complaint against the garnishee. Service of notice to appear and take part in the examination of the garnishee, and of an application to file a supplemental complaint against the garnishee, is not necessary to bring defendant into court, as he is already in court so far as the property seized by the garnishment is concerned (133-326, 158+606). Garnishment, *§*99.

7872. Same, when rendered—Discharge—Transfer of action—

Where garnishee makes full disclosure and thereafter venue in main action is changed to another county, a dismissal there discharges garnishment, as under this section no judgment can be rendered against garnishee until after judgment is rendered against defendant (162+468). Garnishment, *§*196.

7876. Amount of judgment—Effect—

Cited (124-254, 144+959).

Garnishee cannot set off against its liability to defendants, arising after their adjudication as bankrupts, claims arising before bankruptcy; the bankrupts having been discharged (132-336, 156+668). Garnishment, *§*130.

INJUNCTION**7888. How issued—Effect on running of time—**

This section has no application to the question as to the time of accrual of a cause of action to recover excessive freight rates paid while an injunction was in effect prohibiting enforcement of the statutory rates, of which injunction plaintiff had notice, where sufficient time existed for commencement of the action after dissolution of the injunction before the statutory limitation period had run (135-45, 159+1082). Limitation of Actions, *§*111.

7889. Temporary injunction when authorized—

161+520; 161+524.

In general—Whether the injury to plaintiff from the denial of a temporary injunction is so much greater than the injury to defendant from an award of the order that a temporary restraining order should issue is peculiarly for the trial court, and its action on evenly balanced testimony will not be disturbed on appeal (123-231, 143+728). Appeal and Error, *§*954(1).

An order granting or refusing a temporary injunction will not be disturbed on appeal, unless the discretion of the trial court has been abused (130-510, 153+1088). Appeal and Error, *§*954(1).

A citizen and taxpayer may not enjoin municipal officers from leasing a building not needed for public use, unless the municipality and its officers are acting ultra vires and such acts may injuriously affect his rights (162+1073). Municipal Corporations, *§*993(2).

Review of order dissolving temporary injunction where evidence is conflicting (128-391, 151+139). Appeal and Error, ¶954(3).

Injunction granted—A temporary injunction may be granted, though the equities of the complaint are fully denied by the answer under oath, where it appears probable that the material allegations of the complaint will on final hearing be found to be true. A temporary restraining order held properly granted in this case under the rule stated (131-337, 155+99). Injunction, ¶146.

An order granting a temporary injunction restraining the city of St. Paul from executing an order for the removal of an alleged obstruction to the use of a public alley declared by the city a public nuisance held not an abuse of discretion (162+1062). Injunction, ¶38.

Where county officials took possession of a building erected by the county for a sheriff's residence and jail, and used it as a courthouse owing to the fact that the county had no other building at the time for the transaction of the county business, and the sheriff locked up the building and excluded the other county officials from access to records which they had placed in the building, a temporary restraining order procured by the county against the sheriff to prevent him from the doing of such acts pending determination of the suit for injunction will not be reversed on appeal, since the public interests are of greater importance than any right the sheriff is shown to possess in and to the building (134-473, 159+129). Injunction, ¶38.

Facts held sufficient to justify the issuance of a temporary injunction to restrain interference with plaintiff's employes (131-458, 155+638). Injunction, ¶101(2).

Showing of probable irreparable injury from cancellation of contract for sale of land under § 8081, to warrant temporary restraining order against service of notice during pendency of action for rescission of contract for fraud of grantor (132-384, 157+587). Injunction, ¶38.

Injunctions denied—Where, under a complaint, the court was justified in refusing to entertain an action at all, there was no abuse of discretion in denying an application for a temporary injunction (124-10, 144+423, L. R. A. 1915F, 1012, Ann. Cas. 1915B, 448). Injunction, ¶137(1).

Where, after judgment for separate maintenance rendered in this state, the defendant brought an action for divorce in Illinois, a temporary injunction to restrain the prosecution of such action held properly denied (127-21, 148+478). Injunction, ¶136(1).

7891. Bond required—Damages, how ascertained—

Where the expense of removing an embankment constituting a nuisance was less than the diminution in the value of the land owing to the fact that the embankment caused the ponding of water during rain falls, the damages will be restricted to the lesser amount (126-470, 148+311, L. R. A. 1916E, 977). Damages, ¶108.

RECEIVERS

7892. When authorized—

In general—A receivership being merely ancillary to the main action, the validity of the appointment of a receiver depends upon the jurisdiction of the court of the action (126-440, 148+449). Receivers, ¶5.

Subdivisions 3 and 4 of this section do not limit the authority of the court in the appointment of receivers for corporations to the instances provided by § 6634, but recognize the general equity powers of the court to appoint receivers for corporations when proper grounds are made to appear (134-422, 159+948). Corporations, ¶553(1).

Receiver appointed—A receiver may be appointed in an action to foreclose a mechanic's lien on a sufficient showing that it is necessary to protect or preserve the property (161+407). Mechanics' Liens, ¶283.

In foreclosure, where, in addition to mortgagor's insolvency and insufficiency of the security, the rents had been appropriated by mortgagor to his own use and he had not paid taxes or overdue interest, so as to depreciate security, appointment of a receiver to collect and apply rents was justified (162+674). Mortgages, ¶468(3).

Appointment denied—Appointment of receiver to take possession of property pendente lite is within discretion of court. The appointment will not be made unless there is imminent danger of loss and where there is not adequate remedy at law. Appointment will not ordinarily be made when title is in dispute, unless there is a reasonable probability that applicant will prevail on the issue of title. A receiver held properly denied in a suit for a partnership accounting (129-229, 152+264; 129-229, 152+537). Partnership, ¶325(2); Receivers, ¶8, 16.

Where a corporation repudiates an act of one who acquired property as its agent, it has no standing to demand an appointment of a receiver to hold the property pending an action concerning it (126-440, 148+449). Receivers, ¶9.

A receiver held improperly appointed in an action for a partnership accounting (125-283, 146+1101). Partnership, ¶325(2).

JUDGMENT

7896. Measure of relief granted—

In a suit for divorce, in which personal service is had on defendant, the court has power to allow alimony, notwithstanding this section, though the complaint contains no specific demand therefor and the defendant does not answer (130-472, 153+864). Divorce, *§*203.

Plaintiff may recover interest as an element of damages for false representations in the sale of a horse, though he does not pray therefor in his complaint (124-265, 144+954). Damages, *§*157(4).

Where defendant appears plaintiff is not limited, as to his relief, to the prayer of his complaint, but he cannot recover a greater amount than that stated therein (124-279, 144+952). Judgment, *§*252(1).

7897. Judgment between parties and against several defendants—

It is error to instruct that the verdict must be for or against both defendants, and that the only question for determination was whether or not there was a conspiracy between defendants to injure plaintiff (123-17, 142+930, L. R. A. 1915B, 1179, 1195). Torts, *§*28.

That two defendants are sued as copartners does not make a recovery depend on proof of partnership (127-163, 149+20). Partnership, *§*219(1).

7898. Same, how signed and entered—Contents—

In view of this section a judgment, in an equitable action to determine title, held not to grant relief ordinarily incident to an action of ejectment (122-158, 142+150). New Trial, *§*178(1).

A decision of the district court that "it is ordered and adjudged" that the judgment of the probate court, reciting its terms, is affirmed, signed by the judge, and not by the clerk, as required by this section, is an appealable judgment, not a mere order for judgment, so that it should be affirmed, not dismissed, on default of appellant (135-235, 150+565; 135-235, 160+765). Appeal and Error, *§*133.

Evidence, in an action by an employé for injuries from the explosion of a bottle that he was filling on an unguarded machine, held to warrant denial of a motion for judgment notwithstanding the verdict for plaintiff (123-76, 142+1045). Master and Servant, *§*258(12).

7901. Damages for libel—

The notice of retraction need not specify each particular part of a published article which contains defamatory matter, it being sufficient if the publisher can determine, without difficulty, the words that contain a libelous imputation (126-239, 148+102, Ann. Cas. 1915D, 888). Libel and Slander, *§*70.

Persons who are neither owners nor publishers of a newspaper, who cause a circular letter to be published therein of a libelous nature, are not within the provision of this section as to demand for retraction before suit will lie (131-355, 155+212). Libel and Slander, *§*70.

7904. Docketing judgments—Transcripts—Lien on land—

A judgment debtor, acting as a mere conduit for transfer of title to land from one person to another, acquires no title or interest on which the judgment lien attaches (130-365, 153+861). Judgment, *§*780(5).

Where a deed to a wife was adjudged to be an equitable mortgage, an amount deposited to redeem therefrom could not be subjected to a judgment against the husband (128-126, 150+396). Mortgages, *§*608½.

7905. Same—To take effect January 1, 1914—

A subsequently docketed judgment against the grantor in an absolute deed given to secure a debt is not notice to a subsequent purchaser from the grantee (123-293, 143+720). Judgment, *§*787.

7908. Lien discharged by deposit of money, when—

This section held not applicable to redemption from a mortgage foreclosure sale, so as to require commencement of suit, and deposit of amount of tender in court in order to extinguish the right of a judgment creditor to redeem (127-37, 148+1066, Ann. Cas. 1916C, 527). Mortgages, *§*596.

7909. Assignment of judgment—Mode and effect—

This section affects the validity of assignments only as to subsequent purchasers and attaching creditors; between the parties the assignment is valid without compliance with the formalities stated in the statute (127-203, 149+199). Judgment, *§*840.

A finding that a judgment was "sold, assigned, and transferred" to defendant implies the payment of a consideration (127-203, 149+199). Trial, *§*404(1).

7910. Judgments, procured by fraud, set aside by action—

In general—In an action to set aside a judgment for fraud and perjury, evidence that the judgment defendant was not indebted to plaintiff on the note sued on, and that her signature to the note was a forgery was not admissible (133-463, 157+1069). Judgment, *§*444.

Failure to disclose on the trial of a divorce action an agreement of separation, entered into after the desertion charged in the complaint, though intentional, is not fraud or perjury for which the judgment can be set aside under this section. A finding of the trial court that there

was no fraud in obtaining service of the summons in a divorce case held sustained by the evidence (127-406, 149+666). Divorce, *§*167.

To authorize a court of equity to relieve against a judgment on the ground of newly discovered evidence after the time for filing motion for new trial has elapsed, the showing must be clear and specific, free from hearsay, doubt, or conjecture, and justify the conclusion that manifest injustice will result if the relief be not granted (161+257). New Trial, *§*167(2).

This section applies to divorce cases (133-148, 157+1086). Divorce, *§*167.

The fact that defendant's husband failed to call her attention to the action in which summons was served by delivery to him, or a copy thereof, cannot be charged to the plaintiff, so as to form the basis of an action to set aside the judgment (133-463, 157+1069). Judgment, *§*419.

Complaint—A complaint to set aside a judgment for fraud of the prevailing party must, by clear, direct, and positive averments, show that the action is brought within the time stated in this section (135-432, 161+143). Judgment, *§*400(1).

For perjury—An action cannot be maintained under this section to set aside a judgment on the ground of perjury by the successful party or his witnesses, where the issue of fact is squarely made by the pleadings, so that each party knows what the other may be expected to prove (126-414, 148+455). Judgment, *§*443(1), 444.

Where, in an action on a benefit certificate, defendant prevailed on the ground that insured had been tried and expelled as a member, the answer setting up such expulsion, and the reply denying it, plaintiff cannot maintain an action under this section to set aside the judgment on the ground that the same was supported by false and perjured testimony offered in proof of such expulsion, since the evidence related to an issue squarely made by the pleadings, and though the facts as to the expulsion were peculiarly within the knowledge of defendant, plaintiff cannot prevail in his subsequent action, where he could readily have obtained evidence to counteract the alleged false testimony (134-338, 159+835). Judgment, *§*444, 460(4).

Laches—On the facts, held, that a husband was precluded by laches from maintaining an action under this section to set aside a decree of divorce obtained by the wife, though he alleged that he was led to believe that the suit for divorce had been abandoned, and that the parties, though maintaining separate homes, cohabitated together occasionally after the divorce was granted, and until the wife remarried (133-148, 157+1086). Divorce, *§*167.

The right to have a decree vacated for fraud is not absolute and may be barred by laches (133-148, 157+1086). Judgment, *§*456(1).

7914. Discharge of judgments against bankrupts—

Where a judgment debtor sues to cancel the judgment on the ground that since its rendition he had been discharged in bankruptcy, it was error to determine an issue as to whether the judgment was a lien on property owned by one not a party, and to decree satisfaction of the judgment, whether the action be considered as one to cancel or as a motion under this section (125-286, 146+1097). Bankruptcy, *§*433(2), 433½.

7915. Joint debtors—Contribution and subrogation—

Lessor of dam, compelled to pay damages to third persons on account of the flooding of their land, owing to the use of same for floating logs, held not entitled to recover from the lessee under this section (124-475, 145+163). Waters and Water Courses, *§*171(3).

7916. Several judgments against joint debtors—

One of two makers of a note, who gives his personal note to the payee upon the maturity of the note, and the same is accepted as payment of it, may maintain an action for contribution against his comaker (125-266, 146+1094). Contribution, *§*6.

In an action by two makers of a note, who paid it, to recover of a comaker his proportionate share, the evidence justifies the findings of the court (125-266, 146+1094). Contribution, *§*9(6).

7918. By confession—On statement—

135-432, 161+143.

7920. Submission without action—

135-314, 160+792.

EXECUTIONS

7922. Judgments, how enforced—

A judgment held, in view of this section, not to require delivery of possession of land to defendant (122-158, 142+150). Judgment, *§*533.

Where, prior to the passage of 1913 c. 318, the defendant denied liability to plaintiff, but upon action brought such liability was found by the court and judgment directed accordingly prior to such passage, and was entered afterwards, such judgment will not be enforced in proceedings by contempt, where the widow was the pensioner's common-law wife (126-332, 148+279). Contempt, *§*21.

7924. Execution, how issued—Contents—

No order of court is necessary for the issuance of an alias execution. Alias execution cannot issue until the return of the original writ; but where the evidence shows that the original writ was returned, and the alias writ issued on the same day, it will be presumed that the rule stated was complied with (127-203, 149+199). Evidence, *§*83(6); Execution, *§*99.

That the copy of the execution served on the judgment debtor does not bear the signature or seal of the clerk does not invalidate a sale of real estate made under the execution (127-203, 149+199). Execution, ¶94.

7925. When returnable—Inventory—

No formal levy is necessary to be made on real estate in order to sell the same on execution. Failure of the sheriff to make return after the execution sale does not invalidate a sale of real estate (127-203, 149+199). Execution, ¶275, 330.

7930. What may be levied on, etc.—

An estate, dependent on a conversion from realty to personalty in the future is not subject to execution (126-21, 147+812, Ann. Cas. 1915D, 430). Wills, ¶869.

A garnishment lien and an execution lien on the judgment against defendant cannot be tacked, so as to make up the four months period specified by the bankruptcy act (124-254, 144+959). Bankruptcy, ¶161(1).

7935. Certificate to be furnished officer—

Where a levy is made under execution on personal property in hands of third party and receipt is taken by officer pursuant to this section, and no further steps are taken for seven months, the levy becomes ineffectual as lien against property (162+468). Execution, ¶146(1).

7939. Service on judgment debtor—

That copy of execution served on the judgment debtor does not bear the signature or seal of the clerk does not invalidate a sale of real estate under the execution (127-203, 149+199). Execution, ¶93.

7947. Certificate of redemption—Effect of redemption—

Cited (129-356, 152+727).

7949. Redemption pending action to set aside execution sale—

Cited (123-293, 143+720).

7950. Stay of execution on money judgment—

Cited (133-63, 157+903).

7951. Property exempt— * * *

16. The wages of any person, not exceeding thirty-five dollars, due for any services rendered by him for another during thirty days preceding any attachment, garnishment or the levy of any execution against him, provided, that all wages paid to such person, and earned within said thirty day period, shall be deemed and considered a part of, or all, as the case may be, of said exemption of thirty-five dollars. (Subd. 16, amended '15 c. 202 § 1)

In general—It is immaterial to creditors what agreement is made by the debtor with respect to exempt property (133-375, 158+612). Chattel Mortgages, ¶191.

A debtor, by a temporary absence from the state on a visit, held not to have lost his residence (122-228, 142+307). Exemptions, ¶29.

The revision of 1906 introduced no change in this section on the question of selection of exempt property by the debtor, and hence a construction of such provision prior to the revision is still controlling (122-228, 142+307). Exemptions, ¶116.

Where all the property taken on execution is exempt, no selection or claim is necessary to entitle the debtor to assert the right of exemption (122-228, 142+307). Exemptions, ¶116.

Subd. 2—A piano, together with a plush cover and stool, are exempt (122-228, 142+307). Exemptions, ¶47.

Subd. 13—Proceeds of insurance on a building on a homestead, after destruction of the building by fire, is exempt from garnishment under this subdivision (132-372, 157+504). Homestead, ¶79.

Subd. 16—The proviso to G. S. 1913 § 7951 subd. 16, was violative of Const. art. 1 § 12, but the remainder of the subdivision was valid (129-184, 152+135). Exemptions, ¶63; Statutes, ¶64(2).

7952. Levy on property in excess of exemption—

Selection not necessary, where all the property levied on is exempt (122-228, 142+307). Exemptions, ¶116.

CHAPTER 78

JURIES

7970. Talesmen—

The fact that special veniremen were summoned from only 7 out of 36 towns, cities, and villages in the county, and that 8 were summoned from one village and others from points near to it, is not ground for challenge to the panel; no bad faith, fraud, or oppression being established, and it not appearing that the men selected were not fair-minded jurors (124-162, 144-752, Ann. Cas. 1915B, 377). Jury, ~~6~~70(10), 75(2).

7971. Jurors, when and how selected—The county board, at its annual session in January, shall select, from the qualified voters of the county, seventy-two persons to serve as grand jurors, and one hundred and forty-four persons to serve as petit jurors, and make separate lists thereof, which shall be certified and signed by the chairman, attested by the auditor, and forthwith delivered to the clerk of the district court. If in any county the board is unable to select the required number, the highest practicable number shall be sufficient. In counties where population exceeds ten thousand no person shall be included in two successive annual lists, nor shall any juror at any one term serve more than thirty days and until the completion of the case upon which he may be sitting and in counties having two or more terms of court in one year, after the jurors have been drawn for any term of such court, the clerk shall strike from the original list the names of all persons who were drawn for such term, and notify the board thereof, which at its next session shall likewise select and certify an equal number of new names, which shall be added by such clerk to the names in the original list. If such list is not made and delivered at the annual meeting in January, it may be so made and delivered at any regular or special meeting thereafter. Whenever at any term there is an entire absence or deficiency of jurors whether from an omission to draw or to summon such jurors or because of a challenge to the panel or from any other cause, the court may order a special venire to issue to the sheriff of the county, commanding him to summon from the county at large a specified number of competent persons to serve as jurors for the term or for any specified number of days, provided that before such special venire shall issue the jurors who have been selected by the county board and whose names are still in the box provided for in section 9101 of said General Statutes, shall first be called and upon an order of the court the number of names required for such special venire shall be drawn from said box in the manner required by law and the jurors so drawn, shall be summoned by the sheriff as other jurors; and as additional jurors are needed successive drawings shall be ordered by the court until the names contained in said box have been exhausted. (Amended '17 c. 485 § 1)

[7971—]1. **Same—Laws repealed—**That section 166 of the General Statutes of Minnesota for the year 1913 relating to the method of selecting jurors be and the same hereby is repealed. ('17 c. 485 § 2)

7972. Jurors, when and how selected in counties having more than 100,000 inhabitants—

Under this section the judges of the municipal court of St. Paul may select supplementary lists of persons to serve as jurors in that court whenever from any cause there is a deficiency of persons qualified to serve as jurors in the original or supplementary lists (134-300, 150+789). Jury, ~~6~~72(3).

CHAPTER 79

COSTS AND DISBURSEMENTS

7973. Argument as to fees of attorney—Costs defined—

124-526, 144+1134; 131-102, 154+962; note under § 4955 subd. 5.

Construction and performance of agreement (128-392, 151+135). Attorney and Client, *§* 148(1).

Construction of contract; validity of agreement of attorney to advance expenses of litigation, and deduct same from recovery (128-365, 151+125). Attorney and Client, *§* 144.

A stipulation in the contract that neither the attorney nor the client should settle the case without the consent of the other is invalid (128-354, 151+128). Attorney and Client, *§* 189.

Court, in summary proceedings by client under § 4956, may construe agreement as to compensation. Agreement construed (122-87, 141+1103). Attorney and Client, *§* 126, 148.

Champerty (128-392, 151+135). Champerty and Maintenance, *§* 5(1).

A complaint by one attorney against another, alleging a contract by defendant to pay plaintiff half of the fees received in a pending action, held to state a cause of action (125-357, 147+278). Attorney and Client, *§* 151.

7974. Costs in district court—

On appeal by the state from an adverse judgment in an action against the members of the state board of medical examiners to recover license fees collected and not turned into the state treasury, costs are properly taxed in favor of defendants on affirmance of the judgment (124-151, 144+755). States, *§* 215.

In an action to determine adverse claim, where defendant answered claiming title absolute, the court properly allowed costs to plaintiff, though under § 2163 the lien was decreed defendant as holder of the tax certificate (126-218, 148+273). Taxation, *§* 818.

Where plaintiff, suing to quiet a tax title, is denied relief, but the amount of taxes paid is adjudged a lien on the land, defendant is entitled to costs (128-498, 151+201). Taxation, *§* 818.

7975. In actions for services—Double costs—

Double costs held improperly allowed under this section, where no claim therefor was made in the complaint, and no proof of the right thereto on the trial (125-211, 146+359, Ann. Cas. 1915C, 688). Costs, *§* 66.

7976. Disbursements—Taxation and allowance—

128-150, 150+622.

Cited (129-494, 152+868).

Where documentary evidence is procured for use in the trial of several actions growing out of the same transaction, but accruing to different persons, one of the plaintiffs cannot recover more than his proportionate share of the expense of obtaining such testimony, unless he shows that he has actually paid more than his share. Expenses of serving subpoenas by a private person are not taxable disbursements; nor are amounts paid for transcript of testimony obtained for the use of the attorney during the progress of the trial; nor are expense of maps and photographs received in evidence (124-361, 145+114). Costs, *§* 176, 180, 190.

Money paid by plaintiff to civil engineers for a survey of his land, and to a timber cruiser for an estimate of the timber cut and taken from the land by defendant, in preparing for the trial of an action involving the location of the boundary line, are not taxable as "disbursements" (135-349, 160+863). Costs, *§* 178.

Right of defendant to tax witness fees on dismissal by plaintiff after case set for trial (see 132-478, 157+592). Costs, *§* 184(3).

Where three actions against three different defendants were tried together by agreement, and there was a verdict against each defendant, the court is not required to apportion the disbursements among the defendants, where two of them are not liable in any event (130-19, 153+113). Costs, *§* 101.

7977. Several actions—Costs, how allowed—

124-526, 144+1134; 124-361, 145+114; note under § 7976.

7983. Against guardian of infant plaintiff—

Motion by infant plaintiff to require remittitur to be sent without payment of judgment for costs denied, where there was no showing of the inability of the guardian ad litem to pay (127-532, 148+1096). Infants, *§* 116.

7985. Chargeable on estate or fund—

Under this section a receiver, who is the losing party on appeal, cannot be charged personally with the costs, unless it is shown that he is guilty of mismanagement or bad faith (122-531, 142+200). Receivers, *§* 189.

7987. On appeal from justice—

In determining whether a more favorable recovery was had by plaintiff on his appeal the costs in justice court are not to be considered (122-53, 141+811). Costs, *§* 231.

7989. Supreme court—Costs and disbursements—

Costs allowable—On appeal by the state from an adverse judgment in an action by the state against the members of the state board of medical examiners to recover license fees collected and not turned into the state treasury, costs are properly taxed in favor of defendants on affirmation of the judgment (124-151, 144+755). States, \S 215.

Expenses of serving notice of appeal by a private person cannot be allowed as costs. Where notice of appeal is served on the attorney of a party, appellant is not entitled to costs for service of notice on the parties, as such additional service is unnecessary. Sheriff's fees for serving notice of appeal, the record and briefs on defendants, who were not adverse parties, cannot be allowed as part of appellant's costs and disbursements (134-148, 159+564). Costs, \S 247.

Costs cannot be allowed appellant for certified copies of the records, where it does not appear that they were for use in the appellate court (134-148, 159+564). Costs, \S 256(1).

Disbursements allowable—Disbursements for printing matter unnecessary for the presentation of the assignments of error will not be allowed (124-183, 144+768, 1135). Costs, \S 256(2).

A charge for copying exhibits which were incorporated into the settled case used on the motion for new trial will not be allowed (124-183, 144+768, 1135). Costs, \S 254(2), 256(1).

The prevailing party will not be allowed for disbursements for the printing of matter unnecessary to present the questions urged on appeal (128-129, 150+618). Appeal and Error, \S 764.

In view of the practice in the three large cities of the state to charge 60 cents per page for printing the paper book and brief, where the printing is done in one of those cities, a charge of 75 cents per page, the rate prevailing in the rest of the state, will be reduced to 60 cents per page (127-462, 149+940). Appeal and Error, \S 764.

Costs in partition suit—On reversal of judgment denying partition, costs will be taxed against the losing party, and are not expenses of partition under § 8037 (128-539, 151+1102). Partition, \S 114(1).

An appeal in a partition suit is an adversary proceeding, and the rule as to apportionment of costs laid down for the district court by § 8037 does not apply (135-134, 160+496). Partition, \S 114(1).

Several cases between same parties—On appeals in three actions between the same parties and involving identical questions of law, with one record, one brief, one oral argument, and one attorney on each side, and presented together under stipulation, only one allowance of statutory costs should be made (132-69, 156+1). Costs, \S 250.

That the printed record was used in another case, with which the case under consideration was tried, does not require that but one-half of the cost of printing be taxed as costs (127-304, 149+955). Costs, \S 254(1).

7990. Additional allowance—Costs, when paid—

The proviso to this section does not apply to a receiver, unless it appears that the creditors are unable to pay the costs and disbursements (122-531, 142+200). Appeal and Error, \S 1189.

Award in case of appeal for delay (see 134-464, 157+327). Costs, \S 260(1).

CHAPTER 80

APPEALS IN CIVIL ACTIONS

7995. Notice of appeal—Service—Bond and notice to be filed—Deposit, etc.—An appeal shall be made by the service of a notice in writing on the adverse party, and on the clerk with whom the judgment or order appealed from is entered, stating the appeal from the same, or some specific part thereof. To render the appeal effective for any purpose the party appealing shall, within the time provided by law for taking such appeal, file said notice together with the bond on appeal with the clerk of the lower court, and at the time of filing such notice and bond, such appellant shall deposit with the clerk the sum of \$15, of which ten dollars shall be transmitted to the Clerk of the Supreme Court as provided in section 7996, General Statutes 1913, as and for the filing fee required in the Supreme Court by chapter 177, Laws 1915 [5761—1], and the remainder retained by the clerk of the court below as and for the fee provided in section 5756, General Statutes 1913, subdivision 50. Whenever a party, in good faith, gives notice of appeal from a judgment or order, and omits, through mistake, to do any other act necessary to perfect the appeal, or to stay proceedings, the court may permit an amendment on such terms as may be just. (Amended '17 c. 66 § 2)

Where service of notice of appeal is made on the attorney of the adverse party service on such party is unnecessary (134-148, 159+564). Appeal and Error, \S 424.

An appeal held from the judgment, and not rendered ineffective by reference in the notice of appeal to nonappealable orders, or to items claimed to have been erroneously omitted from the judgment (124-361, 145+114). Appeal and Error, [§422](#).

The notice of plaintiff's appeal from the order granting their motion for a new trial does not in terms embrace an appeal from the court's orders on the demurrers interposed, even if such orders were appealable (127-105, 149+3, L. R. A. 1915B, 287). Appeal and Error, [§418](#).

7996. Return to supreme court—Court to fix time for serving and filing printed record and briefs and date for argument, etc.—Upon an appeal being perfected, the clerk of the court appealed from shall immediately transmit to the clerk of the supreme court the ten dollar fee prescribed by section 7995, General Statutes 1913, together with a certified copy of the notice and bond upon appeal, and the filing thereof shall vest in the supreme court jurisdiction of the cause. Upon the filing of such return the supreme court may fix the time within which the printed record and briefs shall be served and filed, and also set a date for the argument of the questions presented by the appeal. Upon request of either party, the clerk of the court appealed from shall at the time required by the rules of the supreme court transmit to the clerk of the supreme court the original record, judgment roll, settled case, or bill of exceptions, and such exhibits as may be on file in his office, the same to remain in the supreme court for its use until the case is disposed of and then returned to the clerk of the court appealed from. (Amended '17 c. 66 § 3)

Record not authenticated will not be reviewed (122-43, 141+806). Appeal and Error, [§612\(1\)](#).

An apparent mistake in making up the record cannot be corrected on an ex parte application for a rehearing (132-437, 157+991). Appeal and Error, [§653\(1\)](#).

A ruling of the trial court excluding a document from evidence cannot be reviewed, when the document is not in the record, and there is no testimony to show its materiality (123-214, 143+357). Appeal and Error, [§692\(1\)](#).

A record excluded by the trial court, not having been returned to the appellate court, the ruling of the trial court cannot be considered (135-229, 160+787). Appeal and Error, [§692\(3\)](#).

Where an order sustaining a demurrer does not appear in the record, the appeal will be dismissed (135-480, 160+486). Appeal and Error, [§635\(1\)](#).

The rule that the trial court may settle and allow a case after an appeal has been taken from an order denying a new trial is not changed by the amendment of this section (127-533, 149+550). Appeal and Error, [§567\(1\)](#).

7997. Powers of appellate court—

Necessary parties on appeal—A judgment affecting a party below, who is not made a party on appeal, cannot be reversed or modified as to such party (132-357, 157+500). Appeal and Error, [§1173\(2\)](#).

As to findings of fact—Generally the supreme court cannot make nor direct specific findings of fact, but, where all the evidence is before it, an erroneous finding is amendable as a matter of law, and an amendment will be directed without a retrial (132-357, 157+500). Appeal and Error, [§1176\(1\)](#).

The supreme court is without power to make findings of fact, or to direct the trial court to find a particular fact, except perhaps where the evidence is conclusive (129-380, 152+774). Appeal and Error, [§1122\(2\)](#).

Decisions in former appeals—A decision on a former appeal in the same case is the law of the case on a subsequent appeal (134-432, 159+955). Appeal and Error, [§1099\(7\)](#).

Decision of the court on a former appeal is the law of the case on a subsequent appeal in the same case (133-464, 158+251). Appeal and Error, [§1099\(7\)](#).

New trial on part of the issues—Where the only error urged is the amount of damages, a new trial may be awarded on that issue alone (124-421, 145+173). Appeal and Error, [§1140\(1\)](#), [1178\(3\)](#).

Where, in an action for personal injuries, the errors at the trial affected only the matter of damages, and not the question of liability, a new trial may be ordered as to the matter of damages alone (133-192, 158+46). New Trial, [§9](#).

In granting a new trial it may in a proper case be limited to a part of the issues; and where the only error of the trial court was the exclusion of evidence as to certain distinct claims, a new trial may be granted as to such claims, without disturbing the verdict in other respects (131-389, 155+391). Appeal and Error, [§1172\(3\)](#).

Where, in a contest over the right of a mortgagor to receive the rents and profits during the period of redemption, the only finding of the trial court was that the mortgagor had received one quarterly payment of such rent, the supreme court, on affirming the right of the mortgagor to such rents and profits, cannot enter judgment for the rents of the remaining three quarters, but will remand the cause for a new trial on the question as to the amount that the mortgagor is entitled to recover (135-443, 161+165). Mortgages, [§491](#).

New trials granted when—A reversal on the ground that the findings of fact are not supported by the evidence is not a direction to the trial court to change its findings without a

further trial. Where a judgment is reversed on the ground that the findings of fact are not sustained by the evidence, and new findings are necessary to support any judgment subsequently rendered, a new trial follows as of course, where the reversal is without specific direction as to new trial (129-380, 152+774). Appeal and Error, *§*1210(1).

On reversal and remand without directions as to a new trial, a new trial follows in the court below as a matter of course (134-471, 153+908). Appeal and Error, *§*1210(1).

Where the supreme court determines that the statute of limitations has run against appellants' claim of title, unless they are under disability, a matter not shown by the record, judgment will not be directed for appellee, but new trial will be ordered (122-235, 142+198). Appeal and Error, *§*836.

Where material facts found by the trial court are not supported by the evidence, and the record contains evidence which might support the finding of other material facts, a new trial will be ordered (132-417, 157+645). Appeal and Error, *§*1001(3).

Where, on appeal from an order denying a new trial, the order is reversed without any express statement as to a new trial or limitation as to the issues to be retried, there must be a new trial of all the issues, and the opinion of the appellate court cannot be resorted to, to establish the claim that it was intended to grant a new trial as to certain issues only (134-5, 153+704). Appeal and Error, *§*1210(1).

Newly discovered evidence arising after appeal—The supreme court has jurisdiction to remand a case, to enable appellant to renew his motion for a new trial for newly discovered evidence arising since the appeal. In determining whether a motion to remand, to enable appellant to renew his motion for a new trial upon the ground of newly discovered evidence arising since the appeal, shall be granted, the court is limited to an inquiry whether the showing made is such that the moving party should have the opportunity to present his motion to the trial court, and the appellate court will not consider the merits (132-475, 157+498). Appeal and Error, *§*1106(4).

Judgments affirmed—Motion for affirmance granted, where appellant delayed for an unreasonable time to file his printed briefs and record (see 135-464, 160+663). Appeal and Error, *§*773(4), 818.

A plaintiff, whose action is erroneously dismissed, will not be awarded a new trial in order to give him merely nominal damages (134-209, 153+979). Appeal and Error, *§*1169(2), 1171(6).

Where, pending appeal in injunction proceedings, the period of time for which injunction is sought expires, judgment will be affirmed (121-523, 141+97). Appeal and Error, *§*1138.

Though the evidence is not conclusive in support of the findings, the judgment must be affirmed, where the evidence reasonably tends to support the findings (132-476, 157+590). Appeal and Error, *§*1010(1).

Moot questions—Dismissal of appeal on question involved becoming moot (141+1134). Appeal and Error, *§*781(1).

Equally divided court—Equally divided court (121-254, 141+115). Appeal and Error, *§*1123.

7998. Judgment notwithstanding verdict or disagreement and discharge of jury—When, at the close of the testimony, any party to the action moves the court to direct a verdict in his favor, and such motion is denied, upon a subsequent motion that judgment be entered notwithstanding the verdict, or notwithstanding the jury has disagreed and been discharged, the court shall grant the same if the moving party was entitled to such directed verdict. An order for judgment notwithstanding the verdict may also be made on a motion in the alternative form asking therefor, or, if the same be denied, for a new trial. If the motion for judgment notwithstanding the verdict be denied, the supreme court, on appeal from the judgment, may order judgment to be entered, when it appears from the testimony that a verdict should have been so directed at the trial; and it may also so order, on appeal from the whole order denying such motion when made in the alternative form, whether a new trial was granted or denied by such order. (Amended '17 c. 24 § 1)

126-491, 148+304; 129-530, 152+1102.

Motion for directed verdict—The provision of this section abolishing directed verdicts does not apply to equitable actions in which the court has ordered the submission of specific issues to the jury (129-59, 151+532). Trial, *§*171.

The provision of this section that a directed verdict shall not be given if the adverse party objects does not deprive the courts of their constitutional power to determine whether a cause of action or defense has been made out, but merely regulates or postpones the exercise of the power (129-4, 151+412). Trial, *§*171.

Arguing the merits of a motion for a directed verdict does not waive the provisions of this section, but remaining silent after the court has stated its understanding that objection has been waived precludes a claim of the benefit of the statute (129-4, 151+412). Trial, *§*181.

Where there is an objection to an instructed verdict under this section, the objecting party is not required to request the submission of particular issues. While such request may be made, the trial court will, without a request, submit such issues as are presented by the pleadings and evidence, as the court deems proper (128-465, 151+182). Trial, *§*255(1).

This section does not deprive the court of the power to strike out immaterial evidence, nor

require it to submit to the jury questions having no bearing upon the outcome of the suit. Where the court states the case, and explains the rules of law applicable, and permits the jury to return such verdict as they may deem proper under the circumstances, the court has fully performed the duty imposed upon it by the statute (127-262, 149+370, L. R. A. 1915B, 1121). Trial, *see* 89, 253(10).

Whether this section applies to dismissals at the close of plaintiff's case, *quere* (127-369, 149+541).

Motion for judgment—A motion for judgment notwithstanding the verdict does not bar a subsequent motion for a new trial (134-292, 157+499). New Trial, *see* 10.

Judgment notwithstanding the verdict can be granted only when a motion for a directed verdict was made at the trial, and a motion to dismiss an appeal from probate court is not equivalent to such motion (124-191, 144+941). Judgment, *see* 190(5, 6).

Where defendant moves for judgment notwithstanding the verdict, but makes no motion for a new trial, the only questions for consideration on appeal are whether the trial court had jurisdiction and whether there is any competent evidence tending to sustain the verdict (134-245, 158+975). Appeal and Error, *see* 863.

Motion under this section does not answer the purposes of a motion for new trial in presenting questions for review on appeal (128-514, 151+419, L. R. A. 1915D, 1077; 129-25, 151+421). Appeal and Error, *see* 289, 292; New Trial, *see* 10.

The trial court may entertain a motion for a new trial after the decision upon an appeal from a judgment; there having been a motion for a judgment notwithstanding the verdict, but no motion for a new trial (134-292, 157+499). Appeal and Error, *see* 1202.

Application in the appellate court for judgment under this section must be denied after the cause has been remitted to the lower court (130-520, 152+866).

When judgment should be ordered—Where the evidence is conflicting, it is error to grant judgment notwithstanding the verdict (130-52, 153+133). Judgment, *see* 190(1).

Judgment notwithstanding the verdict will only be granted when the evidence is conclusive against the verdict (131-313, 155+202). Carriers, *see* 320(28); Judgment, *see* 199(3).

Judgment notwithstanding the verdict will not be ordered, where it appears probable from the record that the defendant has a good defense and can supply the defects in the evidence on another trial (133-230, 158+253). Judgment, *see* 190(3).

A motion for judgment notwithstanding the verdict should be granted only where it clearly appears that the cause of action sought to be established does not in point of substance constitute a right of recovery (133-167, 157+1090). Judgment, *see* 199(1).

That the cause of action arose under the federal employers' liability act did not deprive the state court to direct entry of judgment notwithstanding the verdict (133-460, 157+638). Judgment, *see* 199(1).

Judgment notwithstanding the verdict cannot be ordered merely because the evidence is such that, had the trial court granted a new trial, this court would have sustained its action. Evidence as to negligence in the construction or maintenance of a bridge by which a child was injured held not to warrant an order for judgment notwithstanding the verdict (126-33, 147+710). Judgment, *see* 199(3).

Where pails of hot tar used by a street-repairing gang which traveled from place to place to make repairs in the asphalt pavement were usually carried on a special fire wagon or swung under the wagons, the fact that a pail was by some unknown cause placed in a wagon in which the men rode, so that plaintiff, one of such laborers, inadvertently put his foot therein and was injured, presented no more than a question of the negligence of the foreman of defendant city, and, under this section, it was error to direct a verdict for plaintiff (130-280, 153+516). Master and Servant, *see* 286(3); Trial, *see* 181.

Where the trial court submits a case to the jury on a ground of negligence which does not show liability, but the pleadings and evidence make a case on grounds not submitted, a new trial, and not final judgment, is the remedy. Defendant in a negligence case is not entitled to judgment notwithstanding the verdict, where it appears probable that plaintiff has a good cause of action and that defects in evidence may be supplied on the trial (133-301, 158+430). Judgment, *see* 199(1).

In an action by an employé for injuries, judgment directed for defendant notwithstanding the verdict, for the reason that the finding of negligence by the jury is not sustained by the evidence (131-34, 154+616). Master and Servant, *see* 278(17), 279(5).

On the evidence in a boundary dispute, held, that the supreme court, on reversing the judgment for insufficiency of the evidence to support the verdict, would not order judgment notwithstanding the verdict (124-233, 144+758). Appeal and Error, *see* 1177(8).

Evidence in ejectment held to warrant direction of judgment notwithstanding verdict (122-184, 142+155). Landlord and Tenant, *see* 76(3).

Evidence held to justify granting new trial and denying judgment notwithstanding verdict (121-431, 141+806). Judgment, *see* 199(1).

Judgment held properly rendered in action for injury to property by fire set out by locomotive (121-439, 141+523).

Verdict exonerating superintendent held not inconsistent with verdict against employer (121-388, 141+488). Master and Servant, *see* 297.

Where the pleadings and evidence show a substantial right of action, judgment notwithstanding the verdict will not be granted for defects in the evidence, when it appears from the record that such defects may be supplied on another trial (129-432, 152+840). Judgment, *see* 190(1).

A servant held to have conclusively assumed the risk of injury, so that judgment notwithstanding verdict in his favor would be ordered (128-479, 151+183).

The parents of an intestate, suing for his wrongful death, held to have proved pecuniary loss, so that defendant was not entitled to judgment notwithstanding the verdict for plaintiffs (128-332, 150+1088). Death, ¶77.

In an action for injuries to an employé, evidence held not to warrant judgment notwithstanding the verdict (128-270, 150+919).

In an action by a servant for injuries, held, that the evidence was not such as to require judgment notwithstanding the verdict (128-239, 150+784).

In an action on a benefit certificate, evidence on the issue of payment of dues held not to warrant judgment notwithstanding verdict for plaintiff (125-72, 145+798).

Evidence held to establish probable cause for a criminal prosecution, so that a motion for judgment notwithstanding the verdict was properly overruled (126-128, 147+1093). Malicious Prosecution, ¶64(2).

In an action for wrongful discharge of a servant, held, on the evidence, that it was improper to render judgment notwithstanding the verdict for plaintiff (127-117, 149+8). Judgment, ¶199(3).

In an action by an employé for injuries, defendant held not entitled to judgment notwithstanding the verdict on the ground that the evidence failed to show that plaintiff was acting within the scope of his employment or that contributory negligence conclusively appeared (126-203, 148+113). Judgment, ¶199(3).

To warrant judgment notwithstanding the verdict on the ground of contributory negligence of plaintiff's intestate, the evidence must conclusively establish a state of facts from which no other reasonable inference can be drawn, except that of contributory negligence; it not being sufficient that the verdict is manifestly against the preponderance of the evidence (132-307, 156+346). Death, ¶58(1); Judgment, ¶199(3).

Evidence held insufficient to warrant judgment notwithstanding the verdict (133-73, 157+993).

Whether judgment notwithstanding a verdict against defendant master and in favor of defendant servant in an action for injuries resulting from the negligence of the latter, should be awarded, *quære* (131-313, 155+202).

Appealability of order on motion—This section, as amended by 1915 c. 31, does not repeal § 8001 subd. 4, and hence, where plaintiff had a verdict, and defendant's motion for judgment notwithstanding the verdict was denied, but a new trial, not exclusively for errors occurring at the trial, was granted, defendant could not appeal from the whole order (132-84, 155+1053). Appeal and Error, ¶110.

An order denying a motion for judgment notwithstanding the verdict is not appealable in the absence of a motion for a new trial (132-467, 155+1039). Appeal and Error, ¶109.

An order denying judgment notwithstanding the verdict, but granting motion for new trial, on the ground that the verdict was not sustained by the evidence, is not appealable (125-297, 146+875). Appeal and Error, ¶110.

The supreme court has jurisdiction of an appeal from an order denying a new trial after affirmance on a former appeal of a judgment entered on a motion for judgment notwithstanding the verdict, without motion for new trial (134-292, 157+499). Appeal and Error, ¶110, 1202.

Disposal on appeal—Failure to submit a case to the jury as required by this section, where it clearly appears that such submission could not have changed the result, is error without prejudice (130-111, 153+259). Appeal and Error, ¶1081(4).

Where the judge who tried the case was required by this section (1913 c. 245) to submit the case to the jury, and he retired from the bench without opportunity for review, and the judge who signed the order denying a new trial was without the usual opportunity for review, the judgment will be reversed and a new trial granted (130-277, 153+736).

On appeal from a motion for judgment notwithstanding the verdict or for a new trial, whether the verdict can be sustained must be determined, not by considering the evidence opposed to it, but by considering whether there is any evidence fairly tending to support it (133-467, 158+417). Appeal and Error, ¶863.

7999. Dismissal of appeal in vacation—

Moot question (see 129-535, 152+654). Appeal and Error, ¶781(1).

8000. Appeal, when taken—

Admission of due service of notice of appeal does not give validity to an appeal attempted to be taken after the time limited by this section (135-23, 160+80). Appeal and Error, ¶355.

After the expiration of six months from entry of judgment no appeal lies from an order made before judgment denying a motion for a new trial, though no notice of the entry of the order was given (135-23, 160+80). Appeal and Error, ¶339(6).

After affirmance of a judgment on appeal without a motion for new trial, and after the lapse of six months, a motion for a new trial on the grounds of insufficiency of the evidence and errors occurring at the trial will not lie (134-292, 159+623). New Trial, ¶4.

Thanksgiving Day not being a legal holiday, where the time for perfecting appeal expires on that day, an appeal perfected on the following day will be dismissed (129-522, 151+273). Time, ¶10(2).

8001. Appeal to supreme court—

Wrong citation; should be 7490 (133-124, 155+906).

Subd. 1—Appeal will not lie from an order denying a motion for judgment; the proper remedy being an appeal from the judgment (126-13, 147+668). Appeal and Error, ¶337(2).

In a divorce suit, defendant may appeal from an adverse judgment, though her attorney

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has received the attorney's fee allowed him by the court, and charged against plaintiff, and has satisfied the judgment to that extent (129-531, 152+269). Divorce, [§178](#).

A party aggrieved by a judgment dissolving a corporation and distributing its assets may appeal from the part of the judgment which dissolves the corporation, though he has accepted his part of the assets under the distribution, and is estopped to question that part of the decree (134-148, 156+780). Appeal and Error, [§161](#), 884.

Waiver of right to appeal from judgment granting relief to both parties by acceptance of benefits (see 130-281, 153+756). Appeal and Error, [§161](#).

An appeal lies from a judgment involving only costs and disbursements, where these accrued before the cause of action was settled, were excluded from the settlement, and are not trifling in amount (124-361, 145+114). Appeal and Error, [§119](#).

Subd. 2—Review of discretion of trial court in allowing or refusal of temporary injunction (see 130-510, 153+1088). Appeal and Error, [§954\(2\)](#).

In an action on a beneficiary certificate, denial of defendant's application for an injunction restraining the prosecution of the action until a prior suit in equity, brought by defendant against the insured in his lifetime, to cancel the certificate, had proceeded to judgment, was appealable (132-422, 157+646). Appeal and Error, [§1001\(1\)](#).

The discretion of the trial court in refusing a temporary restraining order will not be disturbed on appeal, the evidence being evenly balanced (123-231, 143+728). Appeal and Error, [§954\(3\)](#).

Review where evidence is conflicting as to right to dissolution of temporary injunction (123-391, 151+139). Appeal and Error, [§954\(3\)](#).

Subd. 3—An order of the district court denying a motion to dismiss certiorari proceedings instituted to review the action of the county commissioners in apportioning school funds under § 2696 does not involve the merits and is not appealable (129-300, 152+541). Certiorari, [§70\(1\)](#).

Subd. 4—An order granting a new trial is not appealable, unless it appears therefrom, or from the memorandum attached thereto, that it is granted exclusively on the ground of errors of law occurring at the trial (128-488, 151+139). Appeal and Error, [§110](#).

The trial court's discretion in awarding a new trial will not be disturbed on appeal, where the evidence is not manifestly and palpably in favor of the verdict (123-530, 143+1123). Appeal and Error, [§979\(2\)](#).

An order denying judgment notwithstanding the verdict, but awarding a new trial on the ground that the verdict was not justified by the evidence, and a subsequent order amending the former order, "so as to read that the court erred in denying the motion of defendant to dismiss the action of the plaintiff at the close of the plaintiff's testimony for the reason that there was no evidence sufficient to sustain the claim made by the plaintiff," held not to show that the order granting a new trial was based exclusively on errors occurring at the trial, so as to support an appeal under this subdivision (134-266, 159+564). Appeal and Error, [§110](#).

1915 c. 31 does not repeal this subdivision, and hence, where plaintiff had a verdict, and defendant's motion for judgment notwithstanding the verdict was denied, but a new trial was granted, not for errors occurring on the trial, defendant was not entitled to appeal from the whole order (132-84, 156+1063). Appeal and Error, [§110](#).

The supreme court cannot interfere with an order granting a new trial unless the evidence is manifestly in favor of the verdict (122-523, 141+812). Appeal and Error, [§979\(2\)](#).

Review of discretion in granting new trial (122-118, 142+10). Appeal and Error, [§979\(2\)](#).

Under this subdivision the sufficiency of the evidence to sustain the verdict is not reviewable on the plaintiff's appeal from an order granting defendant a new trial (134-192, 158+967). Appeal and Error, [§854\(6\)](#), 867(4).

On plaintiff's appeal from an order denying a new trial the defendant cannot have reviewed an appealable order adverse to it made upon its motion to set aside the service of the summons for want of personal jurisdiction (131-122, 154+945). Appeal and Error, [§878\(2\)](#).

A motion in an action of claim and delivery to "vacate and set aside the action" was in effect a motion to dismiss, and an order denying the same was not appealable (132-473, 157+114). Appeal and Error, [§105](#).

This section, as amended by 1913 c. 474, does not contemplate certification of questions to the supreme court, but merely saves the right of appeal from an order overruling a demurrer upon the conditions prescribed thereby; the case being reviewable the same as prior to the amendment (125-325, 146+1110). Appeal and Error, [§308](#).

Subd. 6—Whether an appeal will lie from an order denying a new trial to an intervener in garnishment from an adverse verdict on a special issue submitted to a jury to be used by the court in the ultimate determination of the controversy, upon which no judgment was or could have been rendered held questionable (131-224, 154+1078).

Subd. 7—134-473, 159+129.

An order requiring defendants, the officers of a village, to levy a special assessment to pay for paving, following a judgment restraining the doing of the work without levying a certain percentage of the cost on property benefited, from which judgment no appeal was taken, is appealable as a final order affecting a substantial right (161+1055).

An order modifying a judgment after it had been entered and satisfied of record affects a substantial right, and is appealable (128-321, 150+180). Appeal and Error, [§113\(1\)](#).

An appeal from an order denying a new trial held to have been seasonably taken, the or-

der of the district court directing a dismissal of the appeal from an order of consolidation not being a final order (122-383, 142+723). Schools and School Districts, [§39](#).

Who is aggrieved party—A foreign administrator, who has no right to sue for wrongful death in the state of his appointment, nor in the state where the injury occurred, and consequently not in this state, is not aggrieved by an order in such suit brought by him for the benefit of the next of kin denying his motion to substitute the next of kin as parties plaintiff (126-31, 147+667). Appeal and Error, [§151\(2\)](#).

A receiver in proceedings to enforce the liability of stockholders of an insolvent corporation has no interest in the disallowance of claims against the insolvent, nor in an order granting a rehearing, and cannot appeal from such an order as a party aggrieved (134-376, 159+826). Appeal and Error, [§150\(3\)](#).

The creditor, upon whose complaint a proceeding to enforce the liability of stockholders of an insolvent corporation is founded, has no interest in an order disallowing claims of other creditors, and cannot appeal from such disallowance as a party aggrieved (134-376, 159+826). Appeal and Error, [§150\(6\)](#).

A party whose motion for new trial has been granted is not aggrieved by the order, and rulings on the trial adverse to him cannot be reviewed on his cross-appeal (127-106, 149+3, L. R. A. 1915B, 287). Appeal and Error, [§882\(1\)](#).

Orders held appealable in general—An order vacating an order of dismissal and reinstating the case is appealable (134-261, 159+272). Appeal and Error, [§113\(4\)](#); Dismissal and Nonsuit, [§81\(2\)](#).

An order, made on motion of plaintiff, after death of defendant, substituting appellants as parties defendant, is appealable (131-365, 155+396). Appeal and Error, [§95](#), 128.

An order permitting plaintiff to prosecute his action to final determination, that defendants be permitted to serve an answer within 20 days, that plaintiff may serve a reply, and that the action may be placed on the calendar for trial at the next term, is not appealable (161+783). Appeal and Error, [§73\(1\)](#).

Orders held not appealable in general—No appeal lies to the supreme court from an order made by a court commissioner (131-129, 154+748). Appeal and Error, [§30](#).

From an order imposing punishment for a civil contempt an appeal lies, but no provision has been made for an appeal from an order punishing for criminal contempt. The two forms of contempt defined, and held, in the present case, that the contempt was criminal, and appeal would not lie (128-153, 150+383). Contempt, [§3](#), 66(2).

An order of the district court transferring a cause to the federal district court upon petition and bond filed by a foreign corporation is not appealable; the proper remedy being a motion to remand presented in the federal court (128-77, 150+224, Ann. Cas. 1916D, 1047). Removal of Causes, [§89\(3\)](#).

An appeal does not lie from an order denying a judgment non obstante veredicto (128-10, 150+169). Appeal and Error, [§109](#).

An order made before judgment denying an application to file a supplemental complaint is not appealable (129-536, 152+653). Appeal and Error, [§103](#).

A second appeal from an order granting a new trial, based on a motion to vacate the order granting the new trial, filed and denied after affirmance of the original order, will not be entertained (129-528, 152+270). Appeal and Error, [§1097\(1\)](#).

An order made before trial, denying an application for leave to serve and file a supplemental answer, is not appealable (130-534, 153+306). Appeal and Error, [§103](#).

An order denying a motion for such judgment as the moving party may be entitled to on the files, records, and pleadings, including the decision of this court on appeal, is not appealable (132-413, 157+591). Appeal and Error, [§118](#).

Orders concerning blended motions—Where alternative motion for amended findings, refusal of which is not appealable, or for new trial, order refusing which is appealable, is made, order denying both motions is appealable (162+522). Appeal and Error, [§110](#).

An order based on an alternative motion denying judgment, but granting a new trial, on the ground that the verdict was not sustained by the evidence, is not an appealable order. The former rule of the court sustaining the right of appeal from such orders was abrogated by 1913 c. 474 (125-297, 146+975). Appeal and Error, [§110](#).

An order denying a motion for judgment notwithstanding the verdict and granting a motion for a new trial is not appealable (129-530, 152+1102). Appeal and Error, [§109](#).

Where court, after denying motion for judgment, granted a new trial on its own motions, but without a statement in the order from a memorandum that the new trial was based exclusively upon errors occurring at the trial, the order was not appealable (129-528, 151+1101). Appeal and Error, [§110](#).

8002. Bond or deposit for costs—

No order of the court is necessary to enable a party to make a deposit in lieu of an appeal bond (134-148, 156+780). Appeal and Error, [§388](#).

A deposit made under this section does not stay proceedings on the judgment (134-148, 156+780). Appeal and Error, [§472](#).

8003. Appeal from order—Supersedeas—

A deposit in lieu of an appeal bond, given under § 8002, does not stay proceedings on the judgment (134-148, 156+780). Appeal and Error, [§472](#).

An appeal under § 8311 from an order denying a writ of habeas corpus and remanding the prisoner does not, in view of this section, stay issuance of commitment upon the conviction (123-84, 142+1051). Habeas Corpus, [§113\(8\)](#).

Appellant may by agreement of the parties, give a common-law bond to pay all judg-

ments which may be rendered against them in the action. The bond in this case held a common-law bond. Such a bond must be supported by a valid consideration, and an agreement to stay proceedings and forbear entering judgment is a sufficient consideration (123-218, 143+355). Appeal and Error, ¶1223.

Evidence held to show that an agreement was made between the parties to an action to the effect that appellant should give a common-law bond (123-218, 143+355). Appeal and Error, ¶1246.

Where the bond on appeal, though in form a supersedeas, was not approved, it did not stay proceedings, and the trial court had power to dismiss the action for want of prosecution (135-474, 159+1067). Appeal and Error, ¶452, 470.

An appeal from a nonappealable order and a supersedeas thereon do not deprive the district court of jurisdiction to proceed further in the case (128-10, 150+169). Appeal and Error, ¶436.

8014. Death of respondent—Substitution—

Upon suggestion in the supreme court of the death of a party a hearing of the appeal will not be had without a substitution. If the death occurred before commencement of the action, the proper practice is to move to dismiss the appeal. Respondents are not entitled to a remand in order that proof may be made in the trial court of the death of the party (132-400, 157+648). Appeal and Error, ¶334(1), 780(1), 1106(4).

8015. Death of party after submission of appeal—

132-400, 157+648; note under § 8014.

CHAPTER 82

ACTIONS RELATING TO REAL PROPERTY

GENERAL PROVISIONS

8025. Notice of lis pendens—

The defendant, not claiming ownership of the land included in a highway, an obstruction in which plaintiff seeks to abate, and who is not an abutting owner, and who has no interest in the highway, except as a member of the general public, cannot move for a cancellation of a lis pendens improperly filed by plaintiff. A lis pendens filed in an action not of an authorized class, may be canceled on motion, and an action brought to abate a nuisance consisting of the obstruction of a public highway and recover damages, is not of such class (123-342, 143+911). Lis Pendens, ¶3(1), 20.

8026. Notice of no personal claim—

Failure to publish notice of lis pendens required by § 8061 was not cured by the publication, in connection with the summons, of a notice of no personal claim under this section, where such notice did not contain the information required by § 8061 (123-199, 143+361). Quieting Title, ¶31.

8027. Transfer of title by judgment—

Jurisdiction of the person is not essential to the operation of this section (123-431, 144+138, 52 L. R. A. [N. S.] 1061). Judgment, ¶807.

The courts of the state may determine plaintiff's interest in real estate within the state, as against his nonresident partner, served by publication, though a partnership accounting is necessary (123-431, 144+138, 52 L. R. A. [N. S.] 1061). Partnership, ¶323.

An intestate's estate, having been reduced to personality, the probate court had jurisdiction to determine the rights of a child, claiming under a common-law adoption of her mother, therein, and to award to such child the share to which she was entitled under a contract of the mother with the adopting parents (124-85, 144+455). Descent and Distribution, ¶71(1).

ACTIONS FOR PARTITION

8028. Action for partition or sale, who may bring—

The grantee in a deed from a tenant in common granting the absolute right for a period of five years to take and remove all the sand he might wish and find use for, with the right of entry for such purpose, the value of which right was alleged to be \$1,500, did not have an "estate of inheritance * * * or for years" within this section (129-276, 152+534). Partition, ¶16.

A cotenant has a right to compel partition, actual or by sale, unless he has waived such right by agreement. An agreement between cotenants as to possession of the common property held not to prevent partition (128-207, 150+798, Ann. Cas. 1916D, 925). Partition, ¶14, 22.

8031. Judgment for partition—Referees—

128-207, 150+798, Ann. Cas. 1916D, 925. Partition, ¶22.

Where a tenant in common has given a mortgage on his undivided interest, he cannot, in a partition suit, base error upon the action of the court in shifting the mortgage to the portion allotted to him (135-134, 160+496). Partition, ¶88.

Where a permanent improvement has been erected by one cotenant with the consent of the others, the court in partition, where a division is practicable, may award that portion of the land on which the improvement is to the one who erected it, without taking its value into consideration, if no injustice results to the other cotenants; but, if a sale is necessary, the court may determine in what amount the present value of the whole is enhanced by the improvement, and direct that the amount so determined be paid to the cotenant making the improvement. The relation of landlord and tenant held not to have existed between cotenants, so that an improvement placed on the premises by the alleged lessee tenant with the consent of the other would accrue to the cotenant claimed to have occupied the position of landlord (135-134, 160+496). Partition, ¶85.

8033. Duty of referees—Report—Expenses—

The referees are not required to make and report findings of evidentiary facts. A partition reported and concurred in by two of the referees is binding on approval by the court (133-49, 157+908). Partition, ¶94(1).

The report has the effect of a verdict, and, when confirmed, will not be disturbed on appeal on the ground of error of judgment by the referees unless manifestly inequitable (133-49, 157+908). Appeal and Error, ¶1022(1).

8037. Costs apportioned—

Costs and disbursements under this section may be apportioned among the parties in the district court, but this rule is not applicable to an appeal to the supreme court, since that is an adversary proceeding; and hence a party who did not prevail on appeal as to the real issue cannot complain of the action of the appellate court in making an equal apportionment of the costs of that court (135-134, 160+496). Partition, ¶114(1).

On reversal of a judgment denying partition the costs on appeal are to be taxed to the unsuccessful party and are not expenses under this section (128-539, 151+1102). Partition, ¶114(1).

8038. Compensation for equality—

In partition, evidence as to payment of taxes, in the absence of objection at the time to its character, held to support the court's finding as to amounts due from different parties for taxes (162+463). Partition, ¶63(3).

8041. Sale ordered, when—

128-207, 150+798, Ann. Cas. 1916D, 925; note under § 8028.

A lot 25 feet wide occupied by a business building held not capable of division, and a sale ordered (135-134, 160+496). Partition, ¶63(3).

8042. Liens—New parties—No sale, when—

123-471, 144+140.

8043. Proceeds, how applied—

Mode of adjusting rights of cotenants to improvement erected by one cotenant with consent of others (see 135-134, 160+496). Partition, ¶85. See, also, note under § 8031, ante.

ACTIONS TO TRY TITLE**8060. Action to determine adverse claims—**

126-218, 148+273; note under § 2168.

Title and proof—Plaintiff claiming under tax title cannot prevail by merely showing that defendant has no title (121-339, 141+293). Taxation, ¶793.

A finding of the trial court that a defendant never had any interest in the land in controversy held sustained by the evidence (130-365, 153+861). Quieting Title, ¶44(3).

Enforcement of lien for taxes paid where plaintiff's tax title fails (see 135-186, 160+490). Taxation, ¶814(4).

129-237, 152+405. Boundaries, ¶3(1), 37(3).

Conclusiveness of judgment—Where evidence that plaintiffs were the equitable owners of the land involved in an action to determine adverse claims was excluded as not within the issues, a judgment for defendant did not bar plaintiffs from asserting their equitable rights in a subsequent action (126-1, 147+662, Ann. Cas. 1915D, 589). Judgment, ¶590(4).

Judgment in action to quiet title, in which validity of redemption from mortgage foreclosure is determined, held not an adjudication of the mortgagor's right to rents and royalties under a mining lease of the land during the period of redemption (135-443, 161+165). Judgment, ¶721.

Conclusiveness and effect of judgment as to parties and their privies (see 130-397, 153+758, Ann. Cas. 1916E, 157). Judgment, ¶678(1), 682(1), 713(2).

Pendency of registration proceedings—Pendency of proceeding to register title as ground of abatement of action under this section (see 127-416, 149+735). Abatement and Revival, ¶7.

8061. Unknown defendants—

Where the heirs of a record owner were made defendants under a designation "unknown persons," failure to publish the notice required by this section was fatal to the jurisdiction of the court as to such heirs, and the judgment against them was void. Failure to publish the notice was not cured by the publication, in connection with the summons, of a notice of no personal claim under § 8026, where such notice did not by itself contain all the information required by this section (123-199, 143+361). Quieting Title, ¶31.

8062. Disclaimer—Default—Costs—

In an action to determine adverse claims, where defendant answered claiming title absolute, the court properly allowed costs to plaintiff, though under § 2168 the lien was decreed defendant as holder of the tax certificate (126-218, 148+273). Taxation, ¶818.

8066. Ejectment, etc.—Trial, how conducted—No second trial—

This section, prior to its amendment, was not applicable to equitable actions for the determination of title in which a counterclaim in ejectment was interposed, but was dismissed prior to trial (122-158, 142+150). New Trial, ¶178(1).

Where a purchaser of land, by a contract under which he is not entitled to possession until payment of the price and execution of a deed to him at a time stated, fails to make the payment, the vendor may maintain ejectment to recover possession of the land from such purchaser (127-238, 149+287). Ejectment, ¶9(3), 17.

8075. Occupant not in actual possession—Actions in other form—

Action for use and occupation does not lie against a mere trespasser (123-447, 143+1128). Use and Occupation, ¶1.

8077. Mortgagee not entitled to possession—

One acquiring the right of a mortgagee in possession does not lose the same by being temporarily or involuntarily dispossessed (122-235, 142+198). Mortgages, ¶191.

Under this section the mortgagor is entitled to the full usufruct of the mortgaged land until his rights are barred by foreclosure and expiration of the period of redemption, and this applies to rents and royalties under a mining lease; and this right cannot be contracted away by stipulation in the mortgage, and cannot be affected by a sale by the sheriff under advertisement of the rents and profits (135-443, 161+165). Mortgages, ¶199(1, 2).

A judgment for plaintiffs, in an action by creditors who have redeemed from a mortgage foreclosure sale, quieting title to the land and to a mining lease thereof, determining their redemption valid and determining a later redemption invalid, is not an adjudication of their right to recover rents or royalties that accrued during the year allowed for redemption (135-443, 161+165). Judgment, ¶721.

8078. Conveyance by mortgagor to mortgagee—

128-126, 150+396.

Parol evidence admissible; sufficiency of evidence (128-398, 151+132). Mortgages, ¶32(6), 38(3).

8081. Notice to terminate contract of sale—When default is made in the conditions of any contract for the conveyance of real estate or any interest therein, whereby the vendor has a right to terminate the same, he may do so by serving upon the purchaser, his personal representatives or assigns, either within or without the state, a notice specifying the conditions in which default has been made, and stating that such contract will terminate thirty days after the service of such notice unless prior thereto the purchaser shall comply with such conditions and pay the costs of service. Such notice must be given notwithstanding any provisions in the contract to the contrary, and shall be served within the state in the same manner as a summons in the district court; without the state, in the same manner, and without securing any sheriff's return of not found, making any preliminary affidavit, mailing a copy of said notice or doing any other preliminary act or thing whatsoever. Service of said notice without the state may be proved by the affidavit of the person making the same, made before an authorized officer having a seal, and within the state by such an affidavit or by the return of the sheriff of any county therein.

Provided, however, that three weeks' published notice, and the personal service of a copy of said notice within ten days after the first publication of said notice, and in like manner as the service of a summons in a civil action in the district court upon the person in possession of the premises described in said contract, if the same are actually occupied, shall have the same effect as the personal service of said notice upon said purchaser, his personal representatives or assigns, either within or without the state as herein provided for; and provided further, that in case of such service by publication as herein provided, the said notice shall specify the conditions in which default has

been made and shall state that such contract will terminate ninety days after the service of such notice, unless prior thereto the purchaser shall comply with such conditions and pay the costs of service, and the purchaser, his personal representatives or assigns, shall be allowed ninety days from and after the service of such notice to comply with the conditions of such contract.

If within the time mentioned the person served complies with such conditions and pays the costs of service, the contract shall be thereby reinstated; but otherwise shall terminate. A copy of the notice with proof of service thereof, and the affidavit of the vendor, his agent or attorney, showing that the purchaser has not complied with the terms of the notice, may be recorded with the register of deeds, and shall be prima facie evidence of the facts therein stated; but this act shall in no case be held to apply to contracts for the sale or conveyance of lands situated in another state or in a foreign country. (Amended '15 c. 200 § 1)

In general—A writing held not an option contract, but one for the sale of land, which could not be canceled, except by service of the statutory notice (125-447, 147-442). Vendor and Purchaser, ¶18(4).

As to what law governs a contract for the sale of land located in Washington, but which is executed and is to be performed in Minnesota, determined. A contract to sell land located in Washington may be a Minnesota contract, so that its cancellation will be governed by this section (126-72, 147-948). Vendor and Purchaser, ¶47.

Injunction will lie to restrain foreclosure under this section during the pendency of an action by the vendee to rescind for fraud of the vendor (132-384, 157-587). Injunction, ¶4.

Termination of rights—This section provides the exclusive method by which a vendor may terminate the rights of the vendee, but it does not relieve the vendee from the effect of an abandonment which the vendor elects to treat as such and in which he acquiesces. The facts held to show an abandonment by the vendee and acquiescence by the vendor (132-346, 157-589). Vendor and Purchaser, ¶86, 101.

Notwithstanding this section, a purchaser may, by his acts, be held to have abandoned his contract (161-587). Vendor and Purchaser, ¶86.

Acts constituting breach warranting cancellation (see 126-72, 147-948). Vendor and Purchaser, ¶95(2), 99.

Notice—The parties to a contract for the sale of land may stipulate as to the character of notice which may be given to cancel the contract under this section (126-72, 147-948). Vendor and Purchaser, ¶101.

Where the vendor has given the statutory notice, and the time for payment has expired, the vendee cannot reinstate the contract by thereafter electing to apply his claim for damages in discharge of the installments due under his contract (127-89, 148-895). Vendor and Purchaser, ¶105.

MISCELLANEOUS ACTIONS

8085. Nuisance defined—Action—

Cited (126-95, 147-953).

What is a nuisance—An open ditch maintained by a village, in which filth and sewage is permitted to collect, which, with the surface water, is allowed to be discharged on plaintiff's land, is a nuisance within this section (132-121, 155-1067, L. R. A. 1916D, 426). Municipal Corporations, ¶846.

Barns, located in a residence district, in which a large number of horses are stabled, though not per se a nuisance, may become such because of offensive and disagreeable odors and noise coming therefrom to the substantial detriment and discomfort of adjacent property owners, though such barns are not negligently cared for (131-346, 155-390). Nuisance, ¶3(4).

Where a railroad embankment constitutes a continuing nuisance by ponding water at rain falls, it may be abated by injunction (126-470, 148-311, L. R. A. 1916E, 977). Injunction, ¶48.

Lantern placed at excavation in street as nuisance attractive to children (see 161-503). Negligence, ¶39.

Operation of railroad as nuisance (125-224, 146-353, 51 L. R. A. [N. S.] 1017). Railroads, ¶222(2).

Private actions—Who may sue—A private action cannot be maintained to abate a public nuisance, unless the injury to plaintiff is peculiar to himself, and not an injury common to himself and the general public (123-323, 143-910). Nuisance, ¶72.

Applying the rule stated in the last paragraph, plaintiff held not entitled to maintain a private action for the obstruction of a highway leading from another highway to a public lake (123-323, 143-910). Highways, ¶155.

Recovery may be had under Const. art. 1 § 13, for a private nuisance erected by a railroad company under authority of a statute, irrespective of the question of negligence in construction and irrespective of reasonableness and necessity of the structure from a public standpoint (161-501). Eminent Domain, ¶69; Railroads, ¶113(12).

8090. Trespass—Treble damages—

It is error to exclude evidence that the cutting of timber by defendant's servants was casual or involuntary, where there was a general denial in the answer, though the answer admitted that some timber was cut without lawful authority, there being no averment therein that such cutting was with defendant's knowledge or consent (127-360, 149+461). Trespass, *§* 45(3), 61.

A willful trespass on land, committed by a servant within the scope of his employment, warrants treble damages under this section, though the act was without the master's knowledge or consent (127-360, 149+461). Master and Servant, *§* 302(4).

8095. Action to determine boundary lines—

125-258, 146+1106.

Order laying out cartway not evidence of boundary (121-468, 141+788). Boundaries, *§* 35(1).

Rule for location of lost corners (121-189, 141+102). Boundaries, *§* 7.

Evidence as to lost monuments (121-189, 141+102). Boundaries, *§* 37.

Correcting errors in government survey (121-189, 141+102). Boundaries, *§* 54.

Boundary line of land bordering on a meandered lake determined (126-214, 148+60). Waters and Water Courses, *§* 108, 111.

The maintenance of a fence for upwards of ten years held not to conclude adjoining owners as to the boundary line (126-206, 148+115). Boundaries, *§* 46(1).

In construing a deed with inconsistent description, preference is given to the part most likely to express the intention of the parties and as to which there is least likelihood of mistake. The reference to a county road as a boundary is held to prevail over courses and distances and figures as to the quantity of land conveyed (124-331, 144+1089). Boundaries, *§* 3(4); Deeds, *§* 93, 111.

If doubt exists as to the meaning of a deed, reference may be had to the circumstances connected with its execution, in determining the intent of the parties as to a boundary line (124-331, 144+1089). Deeds, *§* 100.

Evidence held to sustain findings of the trial court that there was a practical location of a boundary line (125-365, 147+241). Boundaries, *§* 37(3).

Evidence held to justify finding of a practical location of a boundary line (129-9, 151+273). Boundaries, *§* 37(3).

Evidence, in a boundary dispute, held insufficient to support verdict for plaintiff (124-233, 144+758). Adverse Possession, *§* 114(2); Boundaries, *§* 37(3).

8097. Judgment—Landmarks—

Evidence as to and establishment of lost government corner (125-258, 146+1106). Boundaries, *§* 6, 37(3).

CHAPTER 83

FORECLOSURE OF MORTGAGES

BY ADVERTISEMENT

8107. Limitation—

A mortgage not containing a power of sale cannot be foreclosed under this section (128-256, 150+899). Mortgages, *§* 331.

[8110—]1. **Defective assignments—Curative—**In every case where a mortgage heretofore made has been assigned in writing and said assignment is defective in that it incorrectly refers to the book or page or both book and page wherein said mortgage is recorded in the office of the register of deeds for the county wherein the land affected thereby is situated and where any said mortgage so assigned has been heretofore foreclosed according to law, by advertisement or otherwise, all said assignments and all said foreclosures of mortgages where so assigned, shall be and the same are hereby made valid and declared to be valid and sufficient for all purposes and of the same force and effect in all respects the same as if said assignment of said mortgage had correctly referred to the book or page or both book and page, wherein said mortgage was recorded in said register of deeds office. Provided, that this act shall not affect any proceeding now pending in any of the courts of this state. ('17 c. 250 § 1)

8111. Notice of sale—Service on occupant—

The occupancy requiring notice must be substantial and suited to an appropriate use of the property possessed. Notice should be served on the person in possession, though his occupancy is without authority or license (130-520, 153+997). Mortgages, *§* 353.

Evidence held to present a question for the jury where there was such occupancy of the mortgaged land at the time of foreclosure as to require service of notice of sale (130-520, 153+997). Mortgages, §369(6).

[8118—]1. **Defective notice—Curative**—All mortgage foreclosures upon real estate situated in this state, heretofore made by advertisement where the notice of sale as published gives the month incorrectly in the dating of such notice, but the sale was duly and regularly made at the time and place specified and appointed in such notice, as shown by the sheriff's certificate of such sale, together with the record of such sale, shall be sufficient for all purposes as against such erroneous date and the foreclosure based thereon together with the record thereof shall not be affected by reason thereof. ('15 c. 123 § 1)

[8118—]2. **Same—Pending actions**—The provisions of this act shall not affect any action now pending in any court of this state. ('15 c. 123 § 2)

[8126—]1. **Defective power—Curative**—Where any real estate mortgage has heretofore been foreclosed by advertisement in this state, by a resident guardian, and all the requirements of law in relation to such foreclosure have been had and taken, pursuant to law, except that the power of attorney therein authorizing an attorney to foreclose such mortgage was executed by a resident guardian, such foreclosures are hereby validated and declared to be valid and sufficient for all purposes. Provided, however, that this act shall not affect any action at law or in equity now pending in any of the courts of this state, affecting any such foreclosure or foreclosure sale. ('15 c. 109 § 1)

[8135—]1. **Certain foreclosure sales legalized**—Every mortgage foreclosure sale by advertisement heretofore made in this state under a power of sale in the usual form contained in any mortgage executed under the laws of the State of Minnesota, and recorded in the office of the register of deeds of the proper county in this state, is together with the record of such sale, hereby legalized and made valid and effective to all intents and purposes as against the following objections, viz:

1. That the hour, book or page of the record of said mortgage or any assignment thereof in the office of the register of deeds is incorrectly stated in the notice of sale or in any of the foreclosure papers, affidavits or instruments;

2. That the date of the mortgage or any assignment thereof, or the date of the filing for record or either, is incorrectly stated in the notice of sale or in any of the foreclosure papers, affidavits or instruments;

3. That the notice of sale was served upon the occupant of the mortgaged premises by leaving a copy thereof with a member of the family of said occupant of suitable age and discretion then resident upon said premises, but who at the time of such service was not upon said premises;

4. That the power of attorney to foreclose the same, provided for by Section 8119 of the General Statutes of Minnesota for 1913, had not been executed and recorded prior to such foreclosure sale, but has since been executed and recorded prior to the passage of this act;

5. That the acknowledgment upon the power of attorney to foreclose such mortgage was taken and certified by a notary public who was also one of the attorneys named in such power of attorney to foreclose such mortgage;

6. That the sheriff's certificate of sale and the affidavit of costs and disbursements of the foreclosure, were not filed in the office of the register of deeds of the proper county within the time required by law, but have been filed and recorded in said register of deeds' office before the passage of this act;

7. That the power of attorney authorizing an attorney to foreclose any such mortgage was made and executed by a person, persons, co-partnership or corporation, their successors or assigns, being at the time of the execution of said power of attorney the owner and holder of said mortgage, but not being at said time the record owner thereof;

8. That the foreclosure sale notice stated a sale day falling on a legal holiday, and said foreclosure sale was held by the sheriff or his deputy of the proper county on a legal holiday;

9. That the mortgage foreclosed or the record thereof is defective by reason of having no witnesses, or only one witness, or has no scroll for a seal, or has a defective certificate of acknowledgment, or has no certificate of acknowledgment;

10. That the power of attorney provided by Chapter 262, General Laws 1897, Section 4461, Revised Laws 1905, and Section 8119 General Statutes 1913, has not been executed and recorded as provided by law, and a written instrument of ratification signed and acknowledged by the party owning and foreclosing such mortgage, ratifying all acts done by the attorney or attorneys conducting such foreclosure, and stating therein that such foreclosure was authorized by such owner, and the same recorded prior to September 1, 1915, in the office of the register of deeds of the county in which such foreclosure was held. ('15 c. 306 § 1)

[8135—]2. **Same—Pending actions**—The provisions of this act shall not affect any action or proceeding now pending in any of the courts of this state. ('15 c. 306 § 2)

[8135—]3. **Certain foreclosure sales legalized**—Every mortgage foreclosure sale by advertisement heretofore made in this state, under power of sale in the usual form, contained in any mortgage duly executed and recorded in the office of the register of deeds of the proper county of this state, together with the record of such foreclosure sale, is hereby legalized, and made valid and effective to all intents and purposes, as against either or all of the following objections, viz.:

1. That the date of the mortgage, or of any assignment thereof, or the day, hour, book or page of the record of the mortgage, or of any assignment thereof, in the office of the register of deeds, is incorrectly stated in the notice of sale, or in any of the foreclosure papers, affidavits or instruments.

2. That the notice of sale was served upon the occupant of the mortgaged premises by leaving a copy thereof with a member of the family of said occupant, of suitable age and discretion, then residing upon said premises, but who, at the time of such service, was not upon said premises.

3. That the power of attorney to foreclose said mortgage provided for by section 8119, General Statutes of Minnesota, 1913, had not been executed and recorded prior to such foreclosure sale as provided by law, or had been executed prior to such foreclosure sale but not recorded until after such sale.

4. That the acknowledgment upon the power of attorney to foreclose such mortgage was taken and certified by a notary public who was also one of the attorneys named in such power of attorney to foreclose such mortgage.

5. That the sheriff's certificate of foreclosure sale and the affidavit of costs and disbursements of the foreclosure, or either, were not filed in the office of the register of deeds of the proper county within the time required by law, but have since been filed and recorded in such register of deeds office before the passage of this act.

6. That the foreclosure sale notice stated a date of sale falling on a legal holiday, and said foreclosure sale was held by the sheriff of the proper county on a legal holiday.

7. That the mortgage foreclosed, or the record thereof, is defective, by reason of having no witnesses, or only one witness, or has no scroll for a seal, or has a defective certificate of acknowledgment, or has no certificate of acknowledgment.

8. That the power of attorney provided for by section 8119 General Statutes of Minnesota, 1913, has not been executed and recorded as provided by law, and an original instrument of ratification, signed and acknowledged by the party owning and foreclosing such mortgage, ratifying all acts done by the attorney, or attorneys conducting such foreclosure, and stating therein that such foreclosure was authorized by such owner, and same shall be recorded in the office of the register of deeds of the proper county, prior to September 1, 1917.

9. That the notice of the mortgage foreclosure sale was published only five or more successive weeks. ('17 c. 186 § 1)

[8135—]4. **Same—Pending actions—**The provisions of this act shall not affect any action or proceeding now pending in any of the courts of this state. ('17 c. 186 § 2)

8143. Action to set aside for certain defects, etc.—

Cited (122-235, 142+198).

This section is not unconstitutional, as against one in possession prior to its enactment, on the ground that one in possession cannot constitutionally be required by an after-enacted statute to bring an action or interpose a defense against an adverse claimant, unless such one in possession claims under the chain of title affected by the foreclosure (130-520, 153+997). Mortgages, ¶330.

8144. Action to set aside, etc.—Limitation—

A foreclosure sale, of record and fair on its face, is not open to attack upon any ground after 15 years (122-235, 142+198). Mortgages, ¶369(5).

8146. Redemption by mortgagor—

Though a foreclosure by advertisement was void because the mortgage contained no power of sale, where the purchaser at the sale, and his grantees, went into possession, and were permitted to remain in possession for more than five years by the mortgagor who had notice of the invalidity of the foreclosure, such mortgagor was estopped to redeem (128-255, 150+899). Mortgages, ¶597.

The mortgagor, during the period of redemption, is entitled to receive the rents and royalties from the land under a mining lease, and such right is not affected by a stipulation in the mortgage, or by the act of the sheriff in selling, under the advertisement, the rents and profits of the land (135-443, 161+165). Mortgages, ¶199(1, 2).

Judgment in action to quiet title and determining validity of redemption held not an adjudication of the right of the mortgagor to rents and royalties under a mining lease during the period of redemption (135-443, 161+165). Judgment, ¶721.

8147. Redemption by creditor—

A judgment creditor, whose judgment is irregular, has no right to redeem; but if the foreclosure purchaser receives and appropriates the redemption money, he cannot question the right of redemption. The certificate holder may rescind his acceptance of redemption money paid to him by a judgment creditor and assail the right of such creditor to redeem if the acceptance of the money was induced by fraud or mistake. Such certificate holder was not obliged to recognize the validity of the judgment, though he was not a party to the action from which it arose. But where such action was pending at the time of redemption, the certificate holder was chargeable with notice of facts affecting the validity of the judgment, and where he accepted the money without inquiry he could not assert that his acceptance was induced by fraud or mistake (129-312, 152+728). Mortgages, ¶594(2), 624(4).

A widow, in her own right and as administratrix of her husband, and a first mortgagee, held entitled to maintain an action to restrain a second mortgagee, whose mortgage was given without consideration, from redeeming from a foreclosure sale under the first mortgage, made at the request of the widow, to cut out the second mortgagee, who refused to execute a release (124-176, 144+761). Mortgages, ¶594(1, 6).

A second mortgage held, on the evidence, to be without consideration, so that the mortgagee had no right to redeem from the foreclosure of a prior mortgage (124-176, 144+761). Mortgages, ¶25(1).

8150. Effect of redemption—

A judgment creditor, whose judgment is irregular, may, on redemption from a foreclosure sale, acquire the rights of an assignee under this section, where the foreclosure purchaser receives and appropriates the redemption money, and there is not present in the transaction fraud inducing the acceptance of the money affording a right to rescind such acceptance (129-312, 152+728). Mortgages, ¶624(4).

BY ACTION

8152. By what rules governed—

An adverse title paramount to the mortgage cannot, over objection, be litigated in a foreclosure action (135-254, 160+776). Mortgages, ¶476, 586.

8154. Judgment—Transcript to sheriff—

Conclusiveness and collateral attack on judgment adjudicating adverse title paramount to mortgage (see 135-254, 160+776). Judgment, ¶479.

[8159—]1. **Certificate dated prior to order confirming sale—Curative—**In every foreclosure of mortgage heretofore made by action where the sheriff's certificate of sale was dated not more than ten days prior to the date of the order of the court confirming the report of such foreclosure sale, as provided by Section 4493 of the Revised Laws of Minnesota for 1905 [8159], such foreclosure sale if otherwise regular, shall be, and hereby is, declared to be valid and sufficient for all purposes and shall not be affected in any manner, by reason of the failure to have the order confirming the report of such fore-

closure sale made and issued prior to the execution of the sheriff's certificate of such foreclosure sale. ('15 c. 156 § 1)

[8159—]2. Same—Pending actions—This act shall not affect any action at law or at equity now pending. ('15 c. 156 § 2)

[8159—]3. Failure to record within 20 days—Curative—That in all mortgage foreclosure sales by action, wherein heretofore the report of sale has been confirmed by order filed in the action, and the certificate of sale was thereafter executed in proper form and recorded more than twenty days after such confirmation, such certificate, and the record thereof, are hereby legalized with the same effect as if such certificate had been executed, acknowledged and recorded within such twenty days, provided that the provisions of this act shall not apply to or affect any action now pending involving the validity of such sale. ('17 c. 33 § 1)

8167. Redemption by mortgagor, creditor, etc.—

A tender by a judgment debtor, before arrival of the time for redemption by a judgment creditor, though after filing of intention to redeem by such creditor, cuts off the creditor's right to redeem, though the debtor does not bring suit to redeem and deposit the money tendered into court. No one in the line of redemptioners, nor an intermeddler, may, by tender of payment of a judgment, impair or destroy a judgment creditor's right to use the judgment to effect redemption (127-37, 148+1066, Ann. Cas. 1916C, 527). Mortgages, ¶596.

After the expiration of the year for redemption by the mortgagor, such mortgagor has no interest entitling him to question the right of redemption as between persons entitled to redeem thereafter. Such mortgagor's right to have the land applied to the payment of debts which were liens thereon depended entirely upon the lienholders making redemption in strict conformity with the statute (127-37, 148+1066, Ann. Cas. 1916C, 527). Mortgages, ¶591(1).

A judgment creditor, whose right to redeem appears on the face of the record, but whose right has in fact been extinguished by a tender of the payment of the judgment, acquires title as against the purchaser at the mortgage foreclosure sale, where the latter accepts the redemption money with knowledge of the tender (127-37, 148+1066, Ann. Cas. 1916C, 527). Mortgages, ¶624(4).

The legal title, though not vesting in the purchaser at a mortgage foreclosure during the period of redemption, relates back as of the date of the mortgage, and after the title vests the rights of the purchaser against prior covenants are the same as if the premises had been conveyed to him at the date of mortgage (126-14, 147+670). Covenants, ¶80.

GENERAL PROVISIONS

8172. Foreclosure or execution sale—Taxes, insurance and interest—

An assignee of a mortgage, who purchased at foreclosure sale, and within the year for redemption paid taxes to avoid the penalty, but without filing the affidavit required by this section, were nevertheless, on the mortgagors' redeeming, subrogated to the lien of the taxes in equity; the failure to file the affidavit being through inadvertence, and the mortgage stipulating that the mortgagee might pay the taxes and charge the amount to the mortgagors (127-124, 149+16). Mortgages, ¶604; Taxation, ¶531(2).

[8173—]1. Receiver on foreclosure of certain urban leaseholds—On the commencement of proceedings to foreclose, either by action or advertisement, any mortgage on a leasehold estate of more than three years covering urban property, or at any time after such commencement until the expiration of the period of redemption, the owner of any such mortgage or the purchaser at the foreclosure sale (as the case may be) may apply to the district court for the appointment of a receiver to take immediate possession of the mortgaged premises and to hold, maintain and operate the same and collect the rents and income therefrom, and apply the same in the manner hereinafter specified. The application for such receiver may be included in an action to foreclose the mortgage or may be by separate action, and if by separate action the only necessary party defendant shall be the owner of the mortgaged leasehold at the time of the commencement of the action. ('15 c. 305 § 1)

[8173—]2. Same—When and how appointed—The court shall appoint the receiver on a showing that default has been made in any of the conditions of said mortgage, without any further evidence and without regard to the solvency or insolvency of the person liable for the debt secured by said mortgage. The appointment shall be made without notice on a showing to the court that the danger of termination or forfeiture of the leasehold estate covered by said mortgage is imminent or that waste of the same is being com-

mitted, or that the owner of said leasehold cannot be found within the state. The mortgagee may be appointed receiver in the discretion of the court. ('15 c. 305 § 2)

[8173—]3. **Same—Bond**—Before entering upon his duties the receiver so appointed shall file in court a bond for the faithful performance of such duties on his part. Said bond shall run to the owner of the mortgaged leasehold and shall be in such sum as the court shall determine and with such surety or sureties as shall be approved by the court. ('15 c. 305 § 3)

[8173—]4. **Same—Powers of**—After filing the bond above mentioned the receiver shall enter into possession of the mortgaged premises and collect all the rents and income therefrom, and shall apply the same to the payment of the expenses of the receivership and to the payment of all sums of money necessary or proper to preserve and protect said leasehold estate, and to maintain and operate the mortgaged premises, and shall pay the surplus (if any) to the owner of the mortgaged leasehold at the termination of the receivership. The receiver may make any or all such payments on his own motion or may make the same in pursuance of an order of the court. Said expenses shall include reasonable attorneys' fees and receiver's fees to be fixed by the court. ('15 c. 305 § 4)

[8173—]5. **Same—Accounts, etc.**—At the termination of the receivership for any cause the receiver shall file his account in said court. On the approval and confirmation of such account the receiver shall dispose of the funds in his hands in accordance with the order of court, and shall thereupon be entitled to a discharge by order of court, freeing and releasing him from all further liability on account of such receivership. ('15 c. 305 § 5)

[8173—]6. **Same—Not to limit other remedies**—The provisions of this act shall in no manner detract from or limit the rights and remedies of the mortgagor or mortgagee respectively now or hereafter provided by law. ('15 c. 305 § 6)

CHAPTER 84

ACTIONS BY OR AGAINST PERSONAL REPRESENTATIVES AND HEIRS

8174. What causes of action survive—

131-365, 155+396; notes under § 7685.

Action on liquor dealer's bond is on contract and in tort and survives the death of the licensee (121-450, 141+793, 47 L. R. A. [N. S.] 183). Abatement and Revival, ¶53.

An action to restrain obstruction of a roadway, in which the issue was as to whether the road was a public one by virtue of an agreement relating to the opening of the way and acts done in pursuance of such agreement, affects interests in land and does not abate on the death of a party (133-128, 156+7). Abatement and Revival, ¶58(2).

8175. Action for death by wrongful act—

Cited (132-344, 157+506).

Complaint—Allegations in an action for wrongful death held not to justify an inference that decedent was guilty of contributory negligence (126-133, 147+964). Master and Servant, ¶256(1).

Complaint in an action for wrongful death held to show negligence on the part of defendant railroad company in leaving a car standing without brakes being set so that it was propelled against decedent without notice or warning (126-133, 147+964). Master and Servant, ¶258(13).

Defenses—As to a deceased wife, for whose death recovery is sought for the benefit of the husband and children, the evidence held that intestate was not guilty of contributory negligence as matter of law, barring recovery for fatal injuries received in a collision of an automobile driven by her husband, in which she was riding, with defendant's automobile (161+715). Highways, ¶213(4).

Contributory negligence of decedent (129-206, 152+137). Death, ¶23.

Imputation to deceased wife of negligence of her husband in driving an automobile in which decedent was riding when she received fatal injuries in a collision with defendant's automobile (see 161+715). Negligence, ¶93(2).

The contributory negligence of one of several beneficiaries is not a bar to all recovery under this section, and where no apportionment or reduction to the extent of his interest is asked for, full recovery will be allowed (161+715). Negligence, [§89\(1\)](#).

Who may sue—A special administrator, appointed in this state, may sue for the wrongful death in this state of his intestate, a nonresident (129-279, 152+413). Attorney and Client, [§174](#).

The surviving spouse and next of kin, as designated in this section, come within the designation of "heirs at law," as used in §§ 7238, 7243 (125-357, 147+278). Death, [§32](#).

Damages—The workmen's compensation act held to govern the amount of recovery for death of an employé of a third person resulting from the negligence of defendant, who was also operating under the act (134-113, 158+913). Master and Servant, [§354](#), 375(1).

The state of the domestic affairs between plaintiff and her husband at or preceding the time of his death, short of desertion by her or forfeiture of her right to support, cannot be inquired into to defeat a recovery or to reduce damages (127-381, 149+660). Death, [§69](#).

The parents of intestate, suing for wrongful death under the federal employers' liability act, held to have suffered a pecuniary loss (128-332, 150+1088). Death, [§77](#).

A verdict of \$700 held not excessive for death of a husband, who had abandoned the wife and beneficiary 20 years before the death, and who had discontinued furnishing her support 7 years prior to such death (133-41, 157+904). Death, [§99\(4\)](#).

A verdict for \$5,000, reduced by the trial court to \$3,500, for death of a boy of 14, held not excessive (134-451, 159+1076, L. R. A. 1917B, 548). Death, [§99\(3\)](#).

A verdict for \$4,585 for death of a farmer 61 years of age, who left a daughter 13 and a son 20 years of age, and four married sons and daughters, is not excessive, as children not presently dependent may be taken into account in assessment of damages (135-37, 159+1087). Death, [§99\(4\)](#).

\$7,500 for death of a yard employé of a railroad company, who was strong and healthy, earned from \$90 to \$100 per month, 32 years of age, and leaving a wife, but no children, held excessive, and reduced to \$5,000 (127-381, 149+660). Death, [§99\(4\)](#).

Excessiveness of verdict under federal employers' liability act (see 131-166, 154+957). Death, [§99\(1\)](#).

Evidence—Burden of proof as to cause of death (see 130-222, 153+529).

Negligence, causing death, held for the jury (128-95, 150+379). Municipal Corporations, [§819\(1\)](#), 821(13), 822(2).

Evidence held to support verdict for plaintiff, on the issues of negligence and contributory negligence, for death resulting from a collision of vehicles in a street (127-515, 150+176). Municipal Corporations, [§706\(5\)](#).

Evidence held to support verdict as to cause of death, and that deceased was not guilty of contributory negligence, and that he did not assume the risk (129-81, 151+539). Master and Servant, [§276\(2\)](#), 280.

Evidence as to negligence and contributory negligence (127-172, 149+24). Master and Servant, [§278\(17\)](#), 281(1).

Evidence held to support a finding as to the cause of death and that defendant was guilty of negligence (125-362, 147+279). Master and Servant, [§119](#), 276(2).

Evidence held not to require a finding that plaintiff's intestate was guilty of contributory negligence (125-362, 147+279). Master and Servant, [§265\(14\)](#), 281(1).

The owner of a taxicab held liable for death of the driver, resulting from defects in the taxicab (122-363, 142+716). Master and Servant, [§278\(3\)](#), 280, 281(5).

Evidence held to justify a finding as to the cause of the death of a servant while working on an ore dock (123-308, 143+789). Master and Servant, [§276\(2\)](#).

Evidence held to support a recovery for wrongful death of a servant (128-10, 150+169). Master and Servant, [§278](#), 289.

Evidence of negligence of employer in failing to keep automatic elevator gates in proper order held to support verdict for wrongful death of employé (129-77, 151+541). Master and Servant, [§286\(18\)](#).

Whether plaintiff's intestate was rightfully in defendant's building when a fire occurred therein which caused her death, so that she would have had the same cause of action that the tenants would have had, was a question for a jury (126-144, 148+108). Landlord and Tenant, [§109\(11\)](#).

A boy of 7 killed at a railroad crossing, held not conclusively shown to have been guilty of contributory negligence (125-137, 145+804). Railroads, [§350\(14\)](#).

Evidence held to present a question for the jury as to contributory negligence of decedent, killed in a collision between an automobile he was driving and a train at a crossing (123-279, 143+722). Railroads, [§350\(13\)](#).

Evidence held not to leave the cause of death a matter of speculation or conjecture, so as to make it improper to submit the question to the jury (124-65, 144+434). Negligence, [§134\(11\)](#).

On the evidence, held, that it did not conclusively appear that plaintiff's intestate was guilty of contributory negligence or that he assumed the risk (124-65, 144+434). Negligence, [§185](#).

Limitations—In an action on the bond of a police officer to recover damages for wrongfully killing plaintiff's intestate, the principal defendant having answered without raising the objection that the action was barred by limitations, held, that the sureties on the bond were not entitled to raise that objection, there being no evidence of collusion between plaintiff and the principal defendant (134-78, 153+908). Limitation of Actions, [§167\(1\)](#).

Death in another state—What laws govern—An action for death occurring in another state is governed by the laws of that state (124-195, 144+942). Death, ¶8.

Concurrent negligence—Joinder of actions—Causes of action for concurrent negligence of two defendants, resulting in wrongful death, may be joined, where the facts concerning the negligence are identical as to time, place, and result (124-531, 144+474). Parties, ¶27.

Liability of administrator's bondsmen—A surety on an administrator's bond executed under § 7416 is liable for the proceeds of the settlement of an action brought under this section (123-165, 143+255). Executors and Administrators, ¶528(1).

8182. Heirs and devisees—When liable—

An action may be maintained under this act without first presenting the claim to the probate court, where the sole property inherited by defendants is a homestead, and the debt is for labor performed by a servant which is excepted by Const. art. 1 § 12, from the operation of the homestead exemption statute, there having been no order limiting the time for filing claims in the probate court, and § 7320 providing that such order need not be made where the only property of the estate is a homestead (161+413). Descent and Distribution, ¶140.

CHAPTER 84A

WORKMEN'S COMPENSATION

PART 1

8195. Injury or death of employé—Liability of employer—Compensation by action at law—Modification of remedies—

128-286, 148+71, L. R. A. 1916D, 412; note under § 8202.

Construction and application—This act is remedial, and must be given a liberal construction (128-43, 150+211; 131-352, 155+103). Master and Servant, ¶348.

An injury may be received in the course of the employment, and still have no causal connection with it, so that it can be said to arise out of the employment (129-176, 151+912). Master and Servant, ¶371.

A teamster, while driving his employer's team on a street in the discharge of his duties, and who was killed by the falling of iron beams being hoisted to the top of a building in course of construction, is subject to this act, the accident being one arising out of and in the course of his employment (134-113, 158+913). Master and Servant, ¶354, 375(1).

A student elevator operator, though not possessing a license under § 1432, was an employé within the compensation act at the time of his injury, which occurred two weeks after he started with his employment, and while he was operating the elevator alone during the absence of his instructor (133-109, 157+995). Evidence, ¶67(1); Master and Servant, ¶361, 366, 405(2).

Injury to a bartender caused by being struck by a glass hurled by a patron of the saloon, who was so drunk that he did not know the nature of his act was one arising out of the employment of the bartender, so as to entitle him to compensation (134-16, 158+713, L. R. A. 1916F, 957). Master and Servant, ¶373.

A workman employed in this state, while working in Wisconsin, where he receives an injury, is subject to the compensation act of Wisconsin, the provisions of which had been accepted by the employer (128-158, 150+620). Master and Servant, ¶86.

Constitutionality—This act is not unconstitutional, in that it deprives the parties of a jury trial, that it deprives the employer of his property without due process of law, that it encroaches on the judiciary, or that it impairs the obligation of contracts of employment entered into before the act took effect (128-221, 150+623). Constitutional Law, ¶80(1). 146, 301, 329.

The workmen's compensation act of Wisconsin held not unconstitutional (128-158, 150+620).

Evidence—Evidence held to sustain findings that death of an employé stricken with paralysis while wheeling wheelbarrow, was caused by rupture of a blood vessel caused by his muscular strain and exertion (162+678). Master and Servant, ¶405(4).

Where a boy of 17 in previous good health dropped dead at the moment of contact with an electric wire while he was working on a wet cement floor, the circumstances sustained a finding of an accidental and not a natural death (134-324, 159+755). Master and Servant, ¶405(4).

Evidence as to intoxication of an employé at the time of an accident held to present a question of fact, the finding on which was conclusive on the appellate court (128-221, 150+623).

Bar to recovery—An action by the representatives of a deceased employé against the master for wrongful death, in which judgment for defendant was rendered on a demurrer to the complaint, for the reason that plaintiff's remedy was under this act, does not involve

the same issues as are presented by a proceeding under this act, and the judgment is not res judicata or a bar to the compensation proceedings (161+388). Judgment, ¶572(2).

[8195—]1. **Amendment to title of act**—The title of Chapter 467, G. L. 1913 [8195-8230] is hereby amended to read as follows:

An Act prescribing the liability of an employer to make compensation by way of damages for injuries due to accident received by an employé arising out of and in the course of employment, modifying common law and statutory remedies, in such cases; establishing an alternative elective schedule of compensation, regulating procedure for the determination of liability and compensation thereunder in certain cases, and prescribing penalties for the violation thereof. ('15 c. 209 § 1)

PART 2. ELECTIVE COMPENSATION

8202. Not applicable to certain employments—This Act shall not be construed or held to apply to any common carrier by steam railroad, domestic servants, farm laborers or persons whose employment at the time of the injury is casual, and not in the usual course of the trade, business, profession or occupation of his employer. (Amended '15 c. 193 § 1)

Construction and application—This act is general in its terms, and applies to all cases within the territorial jurisdiction of the state save those expressly excepted. Those arising from interstate commerce by water are not excepted; and the territorial sovereignty of the state extends to a vessel of the state, though it is upon navigable waters (132-328, 156+669, L. R. A. 1916D, 935). States, ¶12(1).

Casual employment and usual course of business—An employé of a city injured while loading gravel used by the city for repairing its streets was entitled to compensation under the act, though the employment was casual, the work being in the usual course of the city's business (131-352, 155+103). Master and Servant, ¶362.

Where a servant was injured while returning from a business trip for his employer by the usually traveled way, he was within the scope of his employment, though he had deviated from such course while going to the place to which he was sent. Evidence held to support a finding that decedent was in the employ of defendant at the time of the accident, though he had resigned on the preceding day (128-221, 150+623). Master and Servant, ¶375(1).

Constitutionality—This act, in its application to a state vessel on navigable waters is not invalid as an interference with interstate commerce, since Congress has not legislated on the subject (132-328, 156+669, L. R. A. 1916D, 935). Commerce, ¶8(8).

By virtue of § 9 of the federal judiciary act, saving to suitors the right of a common-law remedy, a person injured on a state vessel in a navigable water may either proceed in admiralty in the federal courts, or by action in personam in the state courts; and it is within the power of the state to modify its common-law rules of liability; and hence the workmen's compensation act is applicable to such case, and, as so applied, is not an interference with interstate commerce (132-328, 156+669, L. R. A. 1916D, 935). Master and Servant, ¶347.

The excluding of certain classes of employes does not render the act unconstitutional, as class legislation, and the placing of employers who accept the provisions of the act within the operation of part 2, while those who do not accept are not given the benefit thereof, does not render the act invalid (126-286, 148+71, L. R. A. 1916D, 412). Constitutional Law, ¶208(7).

8203. Agreement to be subject to provisions of part 2—

126-286, 148+71, L. R. A. 1916D, 412; note under § 8202.

The driver of an ice wagon, required to deliver ice at all times irrespective of weather conditions, who was killed by lightning which struck a tree toward which he was walking to seek protection from a downpour of rain, or in the performance of his work of soliciting orders, suffered an accident "arising out of" his employment within this section (129-502, 153+119, L. R. A. 1916A, 344). Master and Servant, ¶375(1).

An employé's death from rupture of blood vessel due to muscular strain and exertion was an accident arising out of and in the course of his employment within this section (162+678). Master and Servant, ¶376(1).

8204. Surrender of other rights—

A settlement by which the employer is released does not operate as a release of any claim for malpractice which the employé might have against the physician who treated him (132-128, 155+1077, L. R. A. 1916D, 644). Master and Servant, ¶354.

8205. Presumption as to acceptance of provisions of part 2—Election not to accept—Notices—

An employé accepts the provisions of the act until he makes an election not to accept it (127-399, 149+662). Master and Servant, ¶369.

That a corporation employer was designated by various names, and not by its true name, by the witnesses on the trial of an action against a third person for wrongful death of the employé, held not sufficient to overcome the presumption raised by this section that the de-

ceased and his employer were subject to the workmen's compensation act (134-113, 158+913). Master and Servant, ~~§~~403, 405(3).

An employé who fails to give the notice of nonacceptance must be deemed to be subject to the act. So held in an action under the Wisconsin compensation act (128-158, 150+620). Master and Servant, ~~§~~358.

A workman, injured in Wisconsin, held not permitted to plead ignorance of the compensation act of that state to avoid its operation in his case (128-158, 150+620). Master and Servant, ~~§~~369.

8206. Termination of acceptance of election—Notice—Agreement—Either party may terminate his acceptance, or his election not to accept of the provisions of Part 2 by thirty (30) days' written notice to the other, such notice to be given as provided in Section 11 [8205]. A duplicate of such notice with proof of service attached thereto shall be filed with the labor commissioner and the time shall not begin to run until the notice is so filed. ('13 c. 467 § 12, amended '15 c. 209 § 2)

Under the proviso of this section, an employé's election, made within 30 days after October 1st, is effective at once, notwithstanding the clauses of this section and § 8205 relative to 30 days' notice; and an employé injured on October 15, 1913, perfecting his election not to be bound by the act on October 29, 1913, is, until that date, bound by the act, and cannot maintain a common-law action for his injury (127-399, 149+662). Master and Servant, ~~§~~359.

[8206—]1. **Minors—**Minors who are permitted to work by the laws of this state shall, for the purposes of Part 2 of this act, have the same power to contract, make election of remedy, make settlements, and receive compensation as adult employes; subject, however, to the power of the court, in its discretion, at any time to require the appointment of a guardian to make such settlement and to receive moneys thereunder or under an award. ('13 c. 467, amended '15 c. 209 § 3)

1915 c. 209 § 3 adds a new section to 1913 c. 467, to be known as section 12A, as above set forth.

8207. Schedule of compensation—Following is the schedule of compensation; (a) For injury producing temporary total disability sixty per centum of the wages received at the time of the injury, subject to a maximum compensation of twelve (\$12.00) dollars per week and a minimum of six and one-half (\$6.50) dollars per week; provided, that if at the time of injury the employé receives wages of less than six and one-half (\$6.50) dollars per week, then he shall receive the full amount of such wages per week. This compensation shall be paid during the period of such disability, not, however, beyond three hundred weeks. Payments to be made at the intervals when the wage was payable, as nearly as may be.

(b) In all cases of temporary partial disability the compensation shall be sixty per cent of the difference between the wage of the workman at the time of the injury, and the wage he is able to earn in his partially disabled condition. This compensation shall be paid during the period of such disability, not, however, beyond three hundred weeks, payment to be made at the intervals when the wage was payable as nearly as may be and subject to the same maximum as stated in clause (a).

(c) For the permanent partial disability, the compensation shall be based upon the extent of such disability. In cases included by the following schedule the compensation shall be that named in the schedule, to-wit:

For the loss of a thumb, sixty per centum of daily wages during sixty (60) weeks.

For the loss of a first finger, commonly called index finger, sixty per centum of daily wages during thirty-five (35) weeks.

For the loss of a second finger, sixty per centum of daily wages during thirty (30) weeks.

For the loss of a third finger, sixty per centum of daily wages during twenty (20) weeks.

For the loss of a fourth finger, commonly called little finger, sixty per centum of daily wages during fifteen (15) weeks.

For the loss of the first phalange of the thumb, or of any finger, shall be considered equal to the loss of one-half of such thumb, or finger, and com-

pensation shall be paid at the prescribed rate during one-half the time specified above for such thumb or finger.

The loss of more than one phalange shall be considered as the loss of the entire finger or thumb; provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

For the loss of a great toe, sixty per centum of daily wages during thirty (30) weeks.

For the loss of one of the toes other than a great toe, sixty per centum of daily wages during ten (10) weeks.

The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe, and compensation shall be paid at the prescribed rate during one-half the time specified above for such toe.

The loss of more than one phalange shall be considered as the loss of the entire toe.

For the loss of a hand, sixty per centum of daily wages during one hundred and fifty (150) weeks.

For the loss of an arm, fifty per centum of daily wages during two hundred (200) weeks.

For the loss of a foot, sixty per centum of daily wages during one hundred and twenty-five (125) weeks.

For the loss of a leg, sixty per centum of daily wages during one hundred and seventy-five (175) weeks.

For the loss of an eye, sixty per centum of daily wages during one hundred (100) weeks.

For the complete permanent loss of hearing in both ears, sixty per centum of daily wages during one hundred and fifty-six (156) weeks.

For the loss of an eye and a leg, sixty per centum of daily wages during three hundred and fifty (350) weeks.

For the loss of an eye and an arm, sixty per centum of daily wages during three hundred and fifty (350) weeks.

For the loss of an eye and a hand, sixty per centum of daily wages during three hundred and twenty-five (325) weeks.

For the loss of an eye and a foot, sixty per centum of daily wages during three hundred (300) weeks.

For the loss of two arms other than at the shoulder, sixty per centum of daily wages during four hundred (400) weeks.

For the loss of two hands, sixty per centum of daily wages during four hundred (400) weeks.

For the loss of two legs, sixty per centum of daily wages during four hundred (400) weeks.

For the loss of two feet sixty per centum of daily wages during four hundred (400) weeks.

For the loss of one arm and the other hand, sixty per centum of the daily wages during four hundred (400) weeks.

For the loss of one hand and one foot, sixty per centum of the daily wages during four hundred (400) weeks.

For the loss of one leg and the other foot, sixty per centum of the daily wages during four hundred (400) weeks.

For the loss of one leg and one hand, sixty per centum of the daily wages during four hundred (400) weeks.

For the loss of one arm and one foot, sixty per centum of the daily wages during four hundred (400) weeks.

For the loss of one arm and one leg, sixty per centum of the daily wages during four hundred (400) weeks.

Where an employee sustains concurrent injuries resulting in concurrent disabilities, he shall receive compensation only for the injury which produced the longest period of disability; but this section shall not affect liability for the concurrent loss of more than one member, for which members compensations are provided in the specific schedule and in sub-section (e) below.

In all cases of permanent partial disability, it shall be considered that the

permanent loss of the use of member shall be equivalent to and draw the same compensation as the loss of that member; but the compensation in and by said schedule provided, shall be in lieu of all other compensation in such cases.

In cases of permanent partial disability due to injury to a member, resulting in less than total loss of such member not otherwise compensated in this schedule, compensation shall be paid at the prescribed rate during that part of the time specified in the schedule for the total loss of the respective member, which the extent of injury to the member bears to its total loss.

All compensations provided in clause (c) of this section for loss of members, or loss of use of members are subject to the same limitations as to maximum and minimum as are stated in clause (a).

In all other cases of permanent partial disability not above enumerated the compensation shall be sixty per centum of the difference between the wage of the workman at the time of the injury and the wage he is able to earn in his partially disabled condition, subject to a maximum of twelve dollars (\$12.00) per week. Compensation shall continue during disability not, however, beyond three hundred (300) weeks.

(d) For permanent total disability as defined in sub-section (e), below, sixty per centum of the wages received at the time of the injury, subject to a maximum compensation of twelve (\$12.00) dollars per week and a minimum compensation of six and one-half (\$6.50) dollars per week, provided, that if at the time of injury the employee was receiving wages of less than six and one-half (\$6.50) dollars per week, then he shall receive the full amount of his wages per week. This compensation shall be paid during such permanent total disability, not exceeding five hundred and fifty (550) weeks; but in all such cases drawing more compensation than six and one-half (\$6.50) dollars per week, the payments after the first four hundred (400) weeks, shall be reduced to six and one-half (\$6.50) dollars per week for the remainder for the five hundred and fifty (550) weeks, while the permanent total disability continues; payment to be made at the intervals when the wage was payable as nearly as may be. The total amount of compensation payable under this sub-section shall not exceed five thousand (\$5,000) dollars in any case. Provided, however, that in case an employee who is permanently and totally disabled, becomes an inmate of a public institution, then no compensation shall be payable unless he has wholly dependent on him for support a person or persons named in sub-sections (1), (2), and (3), of section 14, (whose dependency shall be determined as if the employee were deceased); in which case the compensation provided for in this sub-section shall be paid for the benefit of said persons so dependent, during dependency, in such institution.

(e) The total and permanent loss of the sight of both eyes or the loss of both arms at the shoulder, or complete and permanent paralysis, or total and permanent loss of mental faculties, or any other injury which totally incapacitates the employee from working at an occupation which brings him an income, shall constitute total disability.

(f) In case a workman sustains an injury due to accident arising out of and in the course of his employment, and during the period of disability caused thereby, death results proximately therefrom, all payments previously made as compensation for such injury shall be deducted from the compensation, if any, due on account of death. (Amended '15 c. 209 § 4; '17 c. 351 § 1)

What laws govern—As to a death occurring prior to the enactment of the amendment by 1915 c. 209, the prior law governs (132-249, 156+120). Master and Servant, §349.

Amount, how ascertained—The percentage of compensation is to be based on the salary of the employé which he actually receives, and it was improper to include as a part of such salary an amount paid to the employé by the employer to secure the services of an assistant (128-486, 151+182). Master and Servant, §384.

Several distinct injuries—Where employé suffers two distinct injuries, each entitling him to compensation under workmen's compensation act, payments should not run concurrently, when aggregate will exceed maximum weekly allowance prescribed by cl. (a) of this section, but should be made separately, one following the other (162+527). Master and Servant, §385(1).

Subd. (a)—Evidence held not to sustain a finding that claimant was totally disabled at the time of the hearing of his application for compensation (129-423, 152+838). Master and Servant, §385(15).

Subd. (c)—Employé, who had lost an eye prior to his employment, was entitled only to compensation as for permanent partial disability on loss of the other eye in the course of his employment (129-156, 151+910). Master and Servant, §385(9).

Where an employé's arm is injured, both above and below the elbow, it is improper to divide the injuries into two units, those of the hand and those of the arm, and award compensation for each (129-91, 151+530). Master and Servant, §385(2).

A fracture of the right heel bone, resulting in some difficulty and pain in walking, and a deformed condition of the foot, was a "permanent partial disability" under this section, as amended by 1915 c. 209, but was not the loss of a foot or a permanent loss of the use of such member, and allowance of compensation on the theory of the latter element was improper (161+391). Master and Servant, §385(14).

Subd. (d)—Injuries resulting in the total destruction of sight in the right eye, an impairment of vision to the extent of 95 per cent. in the left eye, which, however, with the aid of glasses, could, as to the left eye, be increased to about one-third normal, and other injuries which affected the head, so that claimant could not stoop or bend over without pain, warranted a finding of permanent total disability (133-439, 158+700). Master and Servant, §405(6).

Subd. (e)—Subd. (e) does not purport to set forth every injury which shall constitute permanent total disability (133-439, 158+700). Master and Servant, §405(6).

8208. Dependents and allowances—(1) Wife and children conclusively presumed wholly dependent—when, for the purposes of this act, the following described persons shall be conclusively presumed to be wholly dependent: (a) wife, unless it be shown that she was voluntarily living apart from her husband at the time of his injury or death, (b) minor children under the age of sixteen years.

(2) Prima facie presumption as to certain children—Children between sixteen and eighteen years of age, or those over eighteen, if physically or mentally incapacitated from earning, shall, prima facie, be considered dependent.

(3) Actual dependents, Wife, child, husband, mother, father, grandmother, grandfather, sister, brother, mother-in-law and father-in-law who were wholly supported by the deceased workman at the time of his death and for a reasonable period of time immediately prior thereto shall be considered his actual dependents, and payment of compensation shall be made to them in the order named.

(3A) Partial dependents. Any member of a class named in subdivision (3), who regularly derived part of his support from the wages of the deceased workman at the time of his death and for a reasonable period of time immediately prior thereto shall be considered his partial dependent, and payment of compensation shall be made to such dependents in the order named.

(4) In death cases, compensation payable to dependents shall be computed on the following basis and shall be paid to the persons entitled thereto, without administration.

(5) If the deceased employé leave a widow and no dependent child, there shall be paid to the widow, thirty-five per centum of the monthly wages of deceased.

(6) If the deceased employé leave a widow and one dependent child, there shall be paid to the widow for the benefit of herself and such child forty-five per centum of the monthly wages of deceased.

(7) If the deceased employé leave a widow and either two or three dependent children, there shall be paid to the widow for the benefit of herself and such children, fifty-five per centum of the monthly wages of deceased.

(8) If the deceased employé leave a widow and four or more dependent children, there shall be paid to the widow for the benefit of herself and such children, sixty per centum of the monthly wages of the deceased.

(8A) In all cases where compensation is payable to a widow for the benefit of herself and dependent child or children, the court shall have power to determine in its discretion what portion of the compensation shall be applied for the benefit of any such child or children and may order the same paid to a guardian.

(9) In case of re-marriage of a widow without children, she shall receive a lump sum settlement equal to one-half of the amount of the compensation remaining unpaid. This sum shall be paid to her within sixty (60) days after written notice to the employer of such re-marriage. In case of re-marriage

of a widow who has dependent children, the unpaid balance of compensation which would otherwise become due to her, shall be paid to such children.

(10) If the deceased employé leave a dependent orphan, there shall be paid forty per centum of the monthly wages of deceased, with ten per centum additional for each additional orphan with a maximum of sixty per centum of such wages.

(11) If the deceased employé leave a dependent husband and no dependent child, there shall be paid to the husband twenty-five per centum of the monthly wages of deceased.

(12) If the deceased employé leave no widow or child or husband entitled to any payment hereunder, but should leave a parent or parents, either or both of whom are wholly dependent on the deceased, there shall be paid, if only one parent, thirty per centum of the monthly wages of the deceased, and if both parents, forty per centum of the monthly wages of the deceased to such parent or parents.

(13) If the deceased leave no widow or dependent child or husband or parent entitled to any payment hereunder, but leaves a grandparent, brother, sister, mother-in-law or father-in-law wholly dependent on him for support, there shall be paid to such dependent, if but one, twenty-five per centum of the monthly wages of the deceased, or if more than one, thirty per centum of the monthly wages of the deceased, divided between or among them share and share alike.

(14) If compensation is being paid under Part 2 of this act to any dependent, such compensation shall cease upon the death or marriage of such dependent, unless otherwise provided herein.

(15) **Partial dependents**—Partial dependents shall be entitled to receive only that proportion of the benefits provided for actual dependents which the average amount of the wages regularly contributed by the deceased to such partial dependent at, and for a reasonable time immediately prior to the injury, bore to the total income of the dependent during the same time.

(16) In all cases where death results to an employé caused by accident arising out of and in the course of employment, the employer shall pay in addition to the medical and hospital expenses provided for in Section 18, the expense of last sickness and burial, not exceeding in amount one hundred (\$100.00) dollars, except, in cases where an insurer of the deceased or a benefit association is liable therefor, or for a part thereof; in which case the employer shall not be required to pay any part of such expense, for which such insurer or a benefit association is liable unless such non-payment by the employer would diminish the benefits received by the dependents of the deceased from any such insurer or benefit association. In case any dispute arises as to the reasonable value of the services rendered in connection with the last sickness and burial, the same shall be approved by the court before payment, after such reasonable notice to interested parties as the court shall require. If the deceased leave no dependents no compensation shall be payable except as provided by this subsection.

(17) **Death compensation**—The compensation payable in case of death to persons wholly dependent shall be subject to a maximum compensation of eleven (\$11.00) dollars per week and a minimum of six and one-half (\$6.50) dollars per week; provided that if at the time of injury the employé receives wages of less than six and one-half (\$6.50) dollars per week, then the compensation shall be the full amount of such wages per week. The compensation payable to partial dependents shall be subject to a maximum of eleven (\$11.00) dollars per week and a minimum of six and one-half (\$6.50) dollars per week; provided that if the income loss of the said partial dependents by such death is less than six and one-half (\$6.50) dollars per week, then the dependents shall receive the full amount of their income loss. This compensation shall be paid during dependency, not exceeding three hundred (300) weeks, payments to be made at the intervals when the wage was payable as nearly as may be.

(18) In computing and paying compensation to orphans or other children, in all cases, only those under eighteen years of age, or those over eighteen

years of age who are physically or mentally incapacitated from earning, shall be included; the former to receive compensation only during the time they are under eighteen, the latter only for the time they are so incapacitated, within the period of three hundred (300) weeks.

(19) Actual dependents shall be entitled to take compensation in the order named in subsection (3) above, until fifty per centum of the monthly wages of the deceased during the time specified in subsection (17) shall have been exhausted; but the total compensation to be paid to all actual dependents of a deceased employé, shall not exceed in the aggregate eleven (\$11.00) dollars per week. ('13 c. 467 § 14, amended '15 c. 209 § 5)

128-486, 151+182; note under § 8207.

Nature of proceeding—The right of action to recover compensation for the death of an employé, given by this section, as amended by 1915 c. 209, is a new and distinct right of action created by the death (131-96, 154+661). Master and Servant, ¶346.

Subd. 1—134-131, 158+798; note under § 8208(3), post.

Subd. 2—134-131, 158+798; note under § 8208(3), post.

In determining compensation, it is immaterial that the dependent inherited from the estate of the employé. A widowed mother, without means, who is supported by her son, partly by his wages and partly by the yield of his land, is wholly dependent within this subdivision (131-27, 154+509). Master and Servant, ¶388.

Subd. 3—Cited (131-27, 154+509).

A widowed daughter, 30 years of age, though not physically or mentally incapacitated from earning money, deriving part of her support from her father is a partial dependent, and entitled to compensation, in view of the addition of the word "child" in the act as amended, notwithstanding the provisions of subds. 1, 2, and 18 of this section, and of subd. (c) of § 8230, post (134-131, 158+798). Master and Servant, ¶388.

Evidence held to warrant a finding of partial dependency (132-249, 156+120). Master and Servant, ¶388.

Where a boy of 17 earned \$7.50 per week, and gave it all to his parents, and lived with them, receiving his lodging, board, and clothing, and there was no other family income, except that his father earned \$18 a week, the family consisting of the parents, the boy, and three sisters, the parents were partially dependent upon such boy, under this subdivision prior to its amendment in 1915 (134-324, 159+755). Master and Servant, ¶405(5).

A statement by the father, one of the partial dependents of a deceased son, that the son's wages were not enough to pay his board and clothing, was not conclusive of the rights of the partial dependents, where such statement was inconsistent with the other testimony (134-324, 159+755). Master and Servant, ¶405(6).

Subd. 3A—134-131, 158+798; note under § 8208(3), ante.

Subd. 9—This subdivision has no application to and does not include a child adopted by the widow after her husband's death (133-265, 158+250). Master and Servant, ¶388.

Subd. 12—Parents of decedent held, under the evidence, "wholly dependent" upon decedent for their support (128-338, 151+123). Master and Servant, ¶388.

The minimum compensation to a person wholly dependent on the deceased employé is \$6 a week for 300 weeks (131-27, 154+509). Master and Servant, ¶386(1).

Subd. 13—A partially dependent sister of a deceased workman is entitled to the minimum fixed by subd. 17 (132-249, 156+120). Master and Servant, ¶386(1).

Subd. 15—The monthly contributions of a workman to his mother should be considered as a part of her "total income" in determining the amount she is entitled to receive as a partial dependent (133-454, 158+792). Master and Servant, ¶386(1).

A partially dependent sister of a deceased workman is entitled to the minimum fixed by subd. 17 (132-249, 156+120). Master and Servant, ¶386(1).

Subd. 17—Construing this subdivision with subd. 12, the minimum compensation to a person wholly dependent on the deceased employé is \$6 a week for 300 weeks (131-27, 154+509). Master and Servant, ¶386(1).

1915 c. 209, amending this section, does not apply to a death caused before the amendment took effect (132-249, 156+120). Master and Servant, ¶348.

A partially dependent sister of a deceased workman is entitled to the minimum fixed by this subdivision (132-249, 156+120). Master and Servant, ¶386(1).

As to a death occurring prior to the amendment of 1915, the minimum compensation of \$6 per week applies, and not \$6.50, the minimum fixed by the amendatory act (134-324, 159+755). Master and Servant, ¶386(1).

8209. Injury increasing disability—

Where an employé, who had previously lost the sight of one eye, lost the other eye by accidental means entitling him to compensation, the employer was liable only for permanent partial disability (129-156, 151+910). Master and Servant, ¶385(9).

8211. Waiting period—In cases of temporary total or temporary partial disability no compensation shall be allowed for the first week after the injury was received, except as provided by section 18 [8212], nor in any case unless

the employer has actual knowledge of the injury or is notified thereof within the period specified in section 19 [8213]. (Amended '15 c. 209 § 6; '17 c. 302 § 1)

The monthly contributions of a workman to his mother should be considered as a part of her "total income" in determining the amount she is entitled to recover as a partial dependent (133-454, 158+792). Master and Servant, ~~§~~386(1).

8212. Medical, and surgical treatment and supplies, etc.—Such medical and surgical treatment, medicine, medical and surgical supplies, crutches and apparatus as may be reasonably required at the time of the injury and thereafter during the disability, but not exceeding ninety (90) days, to cure and relieve from the effects of the injury, the same to be provided by the employer and in case of his inability or refusal seasonably to do so, the employer to be liable for the reasonable expense incurred by or on behalf of the employé in providing the same; provided, however, that the total liability under this section shall not exceed the sum of one hundred (\$100.00) dollars in value; except that the court, may upon necessity being shown therefor at any time within one hundred (100) days after the date of the injury, require the employer to furnish such additional medical, surgical and hospital treatment and supplies during said period of ninety (90) days, as may be reasonable, which together with any such sums or relief theretofore furnished, shall not exceed in all two hundred dollars (\$200.00) in value.

The pecuniary liability of the employer for the medical, surgical, and hospital service herein required and the liability of the employé for any amount in excess thereof shall be limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living when such treatment is paid for by the injured persons, and in all cases of dispute as to the value of the medical or hospital service rendered an injured employé, either party may require that the same, before payment, shall be approved by the court, after such reasonable notice to interested parties as the court shall require. ('13 c. 467 § 18, amended '15 c. 209 § 7)

Under this section the trial court cannot, in the first instance, award more than \$100 for medical services, in absence of an application for additional allowance (134-16, 158+713, L. R. A. 1916F, 957). Master and Servant, ~~§~~385(16).

8213. Notice of injury, etc.—

Where the employer has actual notice of the injury, written notice is not required; and where the mayor and street commissioner of a city had knowledge of injury to a city employé immediately after its occurrence, the city was chargeable with notice (131-352, 155+103). Master and Servant, ~~§~~398.

A finding of "actual notice" of the injury is equivalent to a finding of "actual knowledge" thereof (132-251, 156+278). Master and Servant, ~~§~~398.

Where the employer has actual knowledge of the happening of the accident and of the resulting injury, the giving of notice thereof is not necessary (129-423, 152+838). Master and Servant, ~~§~~398.

[8214—]1. Limitation of actions, etc.—The time within which the following acts shall be performed under Part 2 of this act shall be limited to the following periods respectively:

(1) Actions or proceedings by an injured employé to determine or recover compensation; one (1) year after the occurrence of the injury.

(2) Actions or proceedings by dependents to determine or recover compensation; one year after the date of notice in writing given by the employer to the Department of Labor of the state, stating his willingness to pay compensation when it is shown that the death is one for which compensation is payable. In case the deceased was a native of a foreign country, and leaves no known dependent or dependents within the United States, it shall be the duty of the department of labor to give written notice of said death to the consul or other representative of said foreign country forthwith.

(3) Proceedings to obtain judgment in case of default of employer for thirty (30) days to pay any compensation due under any settlement or determination; one (1) year after such default.

(4) In case of physical or mental incapacity, other than minority, of the injured person or his dependents to perform or cause to be performed any act required within the time in this section specified, the period of limitation in

any such case shall be extended for one year from the date when such incapacity ceases. ('13 c. 467, amended '15 c. 209 § 8)

1915 c. 209 § 8 adds a new section to 1913 c. 467, to be known as section 20A, as above set forth.

This section is not retrospective and does not affect accrued causes of action (134-21, 158+715). Limitation of Actions, ~~§~~ 8(1).

8215. Examination and verification of injury— * * *

(5) Any physician whose services are furnished or paid for by the employer who treats, or who makes or is present at any examination, of an injured employé, may be required to testify as to any knowledge acquired by him in the course of such treatment or examination, relative to the injury or the disability resulting therefrom. ('13 c. 467 § 21, amended '15 c. 209 § 9)

1915 c. 209 § 9 amends this section by adding a subsection, to be known as subsection 5, as above.

8216. Settlement and payment of compensation—Submission to judge of district court—(1) The interested parties shall have the right to settle all matters of compensation between themselves. But all settlements shall be substantially in accordance with the provisions of Sections 13 and 14 of this act [8207, 8208], and shall be approved by a judge of the district court. When so approved such settlements shall be filed with the clerk of the district court and in case of default by the employer in the payment of any compensation determined or agreed upon and the continuation of such default for the period of thirty (30) days after payment is due and payable, the employé may upon five (5) days' notice in writing to the employer of his intention to apply to the court for judgment, cause judgment to be entered on such settlement or determination for all compensation due and payable and unpaid; and such judgment shall have the same force and effect, and may be satisfied as other judgments of the same court. There shall be but one fee, of twenty-five cents (25c) charged by said clerk for services in each case under this subsection and said fee shall cover all services performed by him. * * * ('13 c. 467 § 22 subd. 1, amended '15 c. 209 § 10)

Cited (161+224; note under § 8222, post).

The statute does not require that the employé make a demand on the employer, or that the employer make overtures to the employé, and either party may take the initiative, and, if neither will do so, there is a "failure to agree upon a claim for compensation" (129-423, 152+838). Master and Servant, ~~§~~ 398.

8217. In case of alien dependents—In case a deceased employé, for whose injury or death compensation is payable, leaves surviving him an alien dependent or dependents residing outside of the United States, the said judge shall direct payment of all compensation due to the deceased or to his dependents to be made to the duly accredited consular officer of the country of which the beneficiaries are citizens, if such consular officer reside within the State of Minnesota, or if not, to his designated representative residing within the state, and such consular officer or his representative shall be the sole representative of such deceased employé and of such dependents to settle all claims for compensation and to receive for distribution to the persons entitled thereto, all compensation arising hereunder. The distribution of said funds to be made only on order of the district court. Such consular officer or his representative shall furnish, if required by the district court, a good and sufficient bond, satisfactory to the court, conditioned upon the proper application of the moneys received by him. Before such bond is discharged, such consular officer or representative shall file with the court, a verified account of the items of his receipts and disbursements of such compensation.

Such consular officer or his representative shall before receiving the first payment of such compensation, and at reasonable times thereafter upon request of the employer, furnish to the employer a sworn statement containing a list of the dependents with the name, age, residence, extent of dependency, and relationship to the deceased of each dependent. ('13 c. 467 § 23, amended '15 c. 209 § 11)

8219. Duties of labor commissioner—The commissioner of labor, and the officers and employés of the department of labor and industries upon demand

of an employer, or an employé or his dependent shall advise such party or parties of his or their rights under this act and shall assist so far as possible in adjusting differences between the employé or his dependent and the employer under Part 2 hereof, and are hereby empowered to appear in person before the court in any proceeding under Part 2 of this act as the representative or adviser of any such party; and in any such case such party shall not be required to be also represented by an attorney at law. The commissioner of labor shall observe in detail the operation of the act throughout the state and shall make report thereof to each session of the legislature, together with such suggestions and recommendations as to changes as he may deem necessary or advisable for the improvement thereof. ('13 c. 467 § 24A, amended '15 c. 209 § 12)

8220. Payment in lump sum—The amounts of compensation payable periodically hereunder, either by agreement of the parties, so approved by the court, or by decision of the court, may be commuted to one or more lump sum payments, except compensation due for death or permanent total disability, or for permanent partial disability resulting from total loss of hearing or from the loss of an arm or a hand or a foot or a leg or an eye or of more than one such member. These may be commuted only with the consent of the district court.

In making such commutations the lump sum payments shall, in the aggregate, amount to a sum equal to the present value of all future installments of compensation calculated on a six per cent basis. ('13 c. 467 § 25, amended '15 c. 209 § 13)

161+224; note under § 8222, post.

The court has no authority to commute the periodical payments by awarding a lump sum judgment in lieu thereof, unless the parties agree (134-16, 158+713, L. R. A. 1916F, 957). Master and Servant, §385(20).

8221. Settlements to be final—Exceptions—

161+224; note under § 8222, post.

Upon a sufficient showing of newly discovered evidence, a judgment awarding compensation may be opened (134-189, 158+825). Master and Servant, §411.

8222. When compensation payable periodically may be modified—

Upon a sufficient showing of newly discovered evidence, a judgment awarding compensation may be opened; § 7786, ante, applying (134-189, 158+825). Master and Servant, §411.

Cited (161+388) as bearing on question whether judgment in common-law action for death was a bar to proceedings under the compensation act.

This section applies only to cases where the capacity of the injured man has increased or decreased since the award was made, and is not a remedy for the correction of errors in fixing the compensation (161+391). Master and Servant, §419.

Under this section and §§ 8220, 8221, an award is subject to readjustment as an award of an amount payable periodically for more than six months, when the payments voluntarily made prior to the award under a concession of liability, and taken into consideration in making the award, together with those directed to be made by the award, exceed periodical payments for such period, though the payments directed by the award to be made are not for so long a period as six months (161+224). Master and Servant, §419.

8225. Procedure in case of dispute—Procedure in case of dispute shall be as follows: Either party may present a verified complaint to said judge setting forth the names and residences of the parties and the facts relating to employment at the time of injury, the injury in its extent and character, the amount of wages being received at the time of injury, the knowledge of the employer or notice of the occurrence of said injury, and such other facts as may be necessary and proper for the information of the said judge, and shall state the matter or matters in dispute and the contention of the petitioner with reference thereto.

Upon the presentation of such complaint, it shall be filed with the clerk of the district court of the proper county, and the judge shall fix by order a time and place for the hearing thereof, not less than three (3) weeks after the date of the filing of said complaint. A copy of said complaint and order shall be served as summons in a civil action upon the adverse party within four (4) days after filing the complaint. Within seven (7) days after the service of such complaint, the adverse party may file and serve a verified answer to said complaint, which shall admit or deny the substantial averments of the com-

plaints, and shall state the contention of the defendant with reference to the matter in dispute as disclosed by the complaint. Within five (5) days after the service of the answer the complainant may file and serve a verified reply admitting or denying the matters set forth in the answer.

At the time fixed for hearing, or any adjournment thereof the said judge shall hear such witnesses as may be presented by each party, and in a summary manner decide the merits of the controversy. This determination shall be filed in writing with the clerk of the said court, and judgment shall be entered thereon in the same manner as in causes tried in the said district court and shall contain a statement of facts as determined by said judge. Subsequent proceedings thereon shall only be for the recovery of moneys thereby determined to be due, provided that nothing herein contained shall be construed as limiting the jurisdiction of the supreme court to review questions of law by certiorari. Costs may be awarded by said judge in his discretion, and when so awarded the same costs shall be allowed, taxed and collected as are allowed, taxed and collected for like services and proceedings in civil cases, provided, that if it shall appear that the employer, prior to the commencement of the action, made to the person or persons entitled thereto a written offer of compensation in specific terms, which terms were in accordance with the provisions of this act, then no costs shall be awarded or taxed against such employer. Whenever any decision or order is made and filed by the judge upon any matter arising under Part 2 of this act, the clerk of the court shall forthwith make and forward to the commissioner of labor a certified copy of said decision or order with any memorandum of the judge and of any judgment entered. No fee or other charge shall be collected therefor. ('13 c. 467 § 30, amended '15 c. 209 § 14)

161+224; note under § 8222, ante.

Cited (129-502, 153+119, L. R. A. 1916A, 344).

Nature of proceedings—Proceedings under this section are summary, and when the real parties in interest have pleaded, and a reasonable time has been given to all to prepare for trial, the court may proceed to hear and determine the controversy (133-402, 153+615). Master and Servant, ¶394.

Time and place of hearings—Notwithstanding §§ 176, 177, 183, and 184, fixing the time and place of holding court in St. Louis county, hearings under this section are to be held at the time and place fixed by the judge, regardless of the time and place of holding the regular terms of the court (129-423, 152+838). Master and Servant, ¶409.

Review—The supreme court cannot review an order overruling a motion to set aside a judgment of the district court awarding compensation, as certiorari will lie to review a final order only; such order being intermediate (132-100, 155+1057). Master and Servant, ¶417(3).

Upon certiorari issued on the relation of the one against whom judgment fixing the compensation is entered, the claimant cannot have the record reviewed (132-249, 156+120). Master and Servant, ¶417(3).

Findings of trial court, in absence of settled case, are presumed to be within issues litigated, whether presented by the pleadings or not (129-156, 151+910). Appeal and Error, ¶931(1).

Fees and costs allowed—The allowance of attorney's fees is not authorized by the act, but the court may allow statutory costs, although designated in the order as attorney's fees (129-423, 152+838). Master and Servant, ¶420.

Judgments reopened when—Upon a sufficient showing of newly discovered evidence, a judgment awarding compensation may be opened, and § 7786, ante, applies (134-189, 158+825). Master and Servant, ¶411.

Evidence—Where the employer and insurer filed a joint answer alleging that defendants were ready and willing to pay the compensation due plaintiff under the act, together with reasonable hospital and medical expenses, plaintiff was not obliged to prove compliance with the provisions of the act necessary to make the insurer liable directly to the injured workman, and defendants are barred from resisting the claim for medical expenses on the ground that their own physician was ready to perform the services (161+391). Master and Servant, ¶401, 403.

Findings of the trial court to the effect that claimant was injured while engaged in the work of his employment, and that the employer had actual knowledge thereof, and that the injury rendered claimant totally disabled, held sustained by the evidence. A finding that the employer had "actual notice" of the injury is equivalent to a finding of "actual knowledge" thereof (132-251, 156+278). Master and Servant, ¶405(1).

8226. Rights of action preserved—

Cited (128-221, 150+623).

8227. Insurance of risks of employers—Conditions—Any employer who is responsible for compensation as provided under Part 2 of this act may insure the risk in any manner then authorized by law. But those writing such insurance shall in every case be subject to the conditions in this section hereinafter named.

If the risk of the employer is carried by any insurer doing business for profit, or by any insurance association or corporation formed of employers, or of employers and workmen, to insure the risks under Part 2 of this act, operating by the mutual assessment or other plan or otherwise, then insofar as policies are issued on such risks they shall provide for compensation for injuries or death according to the full benefits of Part 2 of this act. But nothing herein contained shall prevent an employer from insuring only a particular class or classes of employés or of risks.

Such policies shall contain a clause to the effect that as between the workman and the insurer, that notice to and knowledge by the employer of the occurrence of the injury shall be deemed notice and knowledge on the part of the insurer; that jurisdiction of the employer for arbitration or other purposes shall be jurisdiction of the insurer, and that the insurer will in all things be bound by and subject to the awards rendered against such employer upon the risks so insured.

Such policies must provide that the workman shall have an equitable lien upon any amount which shall become owing on account of such policy to the employer from the insurer and in case of the legal incapacity or inability of the employer to receive the said amount and pay it over to the workman or dependents, the said insurer will pay the same direct to said workman or dependents, thereby discharging all obligations under the policy to the employer and all of the obligations of the employer and insurer to the workman; but such policies shall contain no provisions relieving the insurance company from payment when the employer becomes insolvent or discharged in bankruptcy or otherwise, during the period the policy is in force, if the compensation remains owing.

The insurer must be one authorized by law to conduct such business in the state of Minnesota, and authority is hereby granted to all insurance companies writing such insurance to include in their policies in addition to the requirements now provided by law the additional requirements, terms and conditions in this section provided.

No agreement by an employé to pay to an employer any portion of the cost of insuring his risk under this act shall be valid. But it shall be lawful for the employer and the workman to agree to carry the risks covered by Part 2 of this act in conjunction with other and greater risks and providing other and greater benefits such as additional compensation, accident, sickness or old age insurance or benefits, and the fact that such plan involves a contribution by the workman shall not prevent its validity if such plan has been approved in writing by the commissioner of labor. Any employer who shall make any charge or deduction prohibited by this section shall be guilty of a misdemeanor.

If the employer shall insure to his employés the payment of the compensations provided by Part 2 of this act, in a corporation or association authorized to do business in the state of Minnesota and approved by the insurance commissioner of the state of Minnesota, and if the employer shall post a notice or notices in a conspicuous place or in conspicuous places about his place of employment, stating that he is so insured and stating by whom insured, and if the employer shall further file copy of such notice with the labor commissioner of the state of Minnesota, then, and in such case, any suits or actions brought by an injured employé or his dependents shall be brought directly against the insurer, and the employer or insured shall be released from any further liability.

Provided that in case of insolvency or bankruptcy of such insurance company the employer shall not be released from liability under the provisions of this act.

The return of any execution upon any judgment of an employé against any such insurance company unsatisfied in whole or in part, shall be conclusive evidence of the insolvency of such insurance company and in case of the adjudication of bankruptcy or insolvency of any such insurance company by any court of competent jurisdiction, proceedings may be brought by the employé against the employer in the first instance or against such employer and insurance company jointly or severally or in any pending proceeding against any insurance company, the employer may be joined at any time after such adjudication. ('13 c. 467 § 31A, amended '15 c. 209 § 15)

Cited (162+894).

Where an employer insures his workmen under this section, it is not necessary to the maintenance of an action against the insurer that the notice provided for be filed in the office of the labor commissioner before the accident which causes the injury occurs (133-402, 158+615). Master and Servant, ¶383.

Effect of joint answer of employer and insurer, alleging readiness and willingness to pay hospital and medical expenses, as to right of defendants to dispute the employé's claim for medical expenses incurred for the services of a physician other than the regular physician employed by defendants (see 161+391; note under § 8225, ante).

8228. Certain persons liable as employers—Contractors, sub-contractors, etc.—

128-43, 150+211; notes under § 8230 (d).

8229. (1) Liability of party other than employer—Procedure—Third party under part 2—

134-113, 158+913; 126-286, 148+71, L. R. A. 1916D, 412; note under § 8202.

This section has reference to cases where a third person is also subject to the compensation statute, and not where he is not so subject. The fact that the third person is an officer or agent of a corporation which is subject to the statute does not render the statute applicable, unless the officer was acting in the course of his authority for the corporation, and to such an extent as to render the corporation liable for his act (132-344, 157+506). Master and Servant, ¶354.

Cited (161+388) on question whether judgment in action for wrongful death was a bar to proceedings under the compensation act.

Subd. 2—132-128, 155+1077, L. R. A. 1916D, 644; note under § 8204.

8230. Words and phrases defined— * * *

(b) "Child" or "children" shall include posthumous children and all other children entitled by law to inherit as children of the deceased, also step-children who were members of the family of the deceased at the time of his injury and dependent upon him for support. ('13 c. 467 § 34 subd. (b), amended '15 c. 209 § 16)

(g) The terms "employé" and "workman" are used interchangeably and have the same meaning throughout this act, and shall be construed to mean:

(1) Every person in the service of a county, city, town, village or school district therein, under any appointment or contract of hire, express or implied, oral or written; but shall not include any official or any county, city, town, village or school district therein, who shall have been elected or appointed for a regular term of office, or to complete the unexpired portion of any regular term.

(2) Every person, not excluded by Section 8 [8202], in the service of another under any contract of hire, express or implied, oral or written, including aliens and also including minors who are legally permitted to work under the laws of the state. ('13 c. 467 § 34 subd. (g), amended '15 c. 209 § 17)

Cited (161+388) on question as to whether judgment in common-law action for death was a bar to proceedings under the compensation act.

Subd. (a)—This act is not prospective, and the limitation provided by § 8, adding to the former act a section to be numbered 20a, does not affect causes of action which had accrued at the passage of the act (134-21, 158+715). Master and Servant, ¶349.

Subd. (b)—A child adopted by a widow after the death of her husband is not entitled to the benefit of subd. 9 of § 8208, ante (133-265, 158+250). Master and Servant, ¶388.

Subd. (c)—A widowed daughter of deceased held entitled to compensation, though she was 30 years of age and was not physically or mentally incapacitated to earn money (134-131, 158+798). Master and Servant, ¶388. See note under § 8208(3), ante.

Subd. (d)—This provision does not confine the relation of employer and employé within narrow limits, the ordinary test as to that relation being applicable. Test for determining relation of master and servant stated (128-43, 150+211). Master and Servant, ¶88(1).

Evidence held to sustain a finding that a deceased workman was an employé at the date of his injury (133-402, 158+615).

Subd. (g) (1)—A policeman is a person in the service of a city, he not being appointed for a regular term of office; and hence he is an "employé" within the act (134-26, 158+790).

The dependents of a fireman of a city, killed while in the performance of his duty, are entitled to recover under this act. The fact that a city fireman was a member of a firemen's relief association, the funds of which were derived from a state tax, from a portion of insurance premiums collected, and from voluntary contributions of members of the association, did not prevent the dependents of the fireman, killed in the performance of his duties, from receiving compensation under this act to the full amount (134-26, 158+790). Master and Servant, *§* 364, 386(2).

Subd. (g) (2)—The clause "minors who are legally permitted to work under the laws of the state," found in this section was intended to exclude minors whose employment is prohibited by law (162+680). Master and Servant, *§* 366.

A boy of 18, though not licensed as an elevator operator under § 1432, was not, in view of §§ 3848, 3871, illegally employed, and hence excluded from the workmen's compensation act, where, at the time of his injury he was a student operator, and was operating the elevator alone during the absence of his instructor (133-109, 157+995). Master and Servant, *§* 366.

Subd. (h)—What constitutes "accident," see notes under §§ 8195, 8203.

Subd. (i)—An injury may be received in the course of the employment, and still have no causal connection with it, so that it can be said to arise out of the employment (129-176, 151+912). Master and Servant, *§* 375(1).

Subd. (k)—129-91, 151+530; note under § 8207 (c).

CHAPTER 85

OFFICIAL AND OTHER BONDS—FINES AND FORFEITURES

8231. Bonds, etc.—Sureties, qualifications—

126-435, 148+454.

8233. State and county officers—Uniform bond—

A statutory bond, containing the statutory conditions, and also other conditions, will be so construed as to give effect to the statutory conditions, unless the language of the bond precludes such construction (122-504, 142+899, Ann. Cas. 1914D, 945). Bonds, *§* 50.

8235. Surety companies—

A corporation, in the business of executing bonds as security for a consideration or premium, is entitled to the benefit of the equitable right of subrogation (126-188, 148+55). Subrogation, *§* 33(1).

8243. Official bonds, security to whom—Actions—

Cited (162+1054).

Sureties on an official bond are liable for unfaithful or improper conduct of the officer in the performance of acts or duties authorized or required by law, including trespass on person or property while performing official acts; but they are not liable for acts wholly outside the scope of the official duties of the principal (133-274, 158+394). Officers, *§* 129.

8244. Leave to bring action—Indorsement on execution—

The provision for leave of court does not apply to action on a liquor dealer's bond (162+1054). Intoxicating Liquors, *§* 282.

8245. Bonds of public contractors—Contracts with state board of control—Penalty—

Cited (162+1054; 133-54, 157+901).

Liability of sureties in general—Liability of sureties for delay in performance of contract for construction of school building (see 133-351, 158+619). Principal and Surety, *§* 82(2).

Acquiescence in contractor's default as discharging sureties (see 133-351, 158+619). Principal and Surety, *§* 129(1).

Liability on bond given under this section dependent on construction of contract (see 135-9, 159+1075).

County ditch contractor's bond—County ditch contractor's bonds held valid statutory obligations only to the extent of the fair import of their conditions (125-211, 146+359, Ann. Cas. 1915C, 688). Drains, *§* 49.

Rural highway contractor's bond—The bond required to be given by a contractor for the construction of a state rural highway, and conditioned as required by this section secures the payment of labor, skill, and material furnished in repairs upon tools and machinery employed in the work, and also for the reasonable value or agreed price of the use of appropriate tools and machinery furnished during and in the construction; but it does not secure payment of

the price of tools or machinery sold to the contractor and which become a part of his equipment, although the same are sold for the particular contract and are necessary and appropriate for that purpose (133-336, 158+432). Highways, ~~§~~113(5).

Subrogation by surety—A surety on a contractor's bond, who has paid the claim of the creditor under compulsion, is entitled to subrogation to the rights of such creditor in the fund retained by the state, and such right was superior to the rights of a bank which had loaned money to the contractor (126-188, 148+55). Subrogation, ~~§~~7(2), 33(2).

8249. Limit of time to bring action—

The notice required by this section is not applicable to a drainage contractor's bond given under §§ 5497, 5537, ante (133-90, 157+998). Drains, ~~§~~49.

This section held not applicable to a bond given by a contractor to a city before the amendment of 1909, and which bond was governed by a provision of the city charter as to notice to the contractor and surety before action on the bond, though such charter provision was repealed during the life of the bond (134-121, 158+802). Municipal Corporations, ~~§~~49, 348.

This section has no application to the bond of a ditch contractor given under § 5537 (126-435, 148+454). Drains, ~~§~~49.

[8252—]1. **Subrogation of surety, etc.**—Whenever the surety upon the bond of any state officer shall have fulfilled the conditions of such bond and compensated the state for any loss occasioned by any act or omission of such officer, such surety shall be subrogated to all the rights of the state and if there shall be any property, evidence of indebtedness, or other obligation, or evidence thereof, in the possession of any official of the state and which shall have been received in connection with the transaction wherein such loss shall have occurred, the governor upon satisfactory proof that such loss has been so paid and the obligation of such bond fulfilled by said surety, shall thereupon by sufficient instruments of transfer, assign, transfer or convey to such surety any such property, evidence of indebtedness or obligation. ('17 c. 492 § 1)

CHAPTER 86

ACTIONS TO VACATE CHARTERS, ETC., AND TO PREVENT USURPATIONS

8254. To vacate charter, etc.—

Where corporation's officers conduct its affairs in exclusive interest of stockholders electing them, and wrongfully exclude other stockholders, without statutory authority, court of equity, at suit of other stockholders, may wind up its affairs, appoint a receiver, and order a distribution (162+1056). Corporations, ~~§~~553(6).

Dissolution of corporation at suit of minority stockholders (see 134-148, 158+820). Corporations, ~~§~~614(1).

8256. To vacate letters patent—

135-408, 161+156; note under § 5237, ante.

CHAPTER 87

SPECIAL PROCEEDINGS

MANDAMUS

8266. To whom issued, etc.—

When will lie—Nature of duty to be commanded (121-182, 141+97, 46 L. R. A. [N. S.] 9).

The supreme court will not issue a writ of mandamus to compel a district judge to settle a case presented after the lapse of the statutory period, there being no abuse of judicial discretion (132-146, 155+905). Appeal and Error, ¶571.

Mandamus is the proper remedy to compel a court to proceed with the trial of an action over which it has jurisdiction, when the only ground of reversal is that it is within its discretion to decline to exercise jurisdiction (126-501, 148+463, Ann. Cas. 1915D, 198). Mandamus, ¶31.

Mandamus is the proper remedy to compel a municipal court to assume jurisdiction of a case removed to it by change of venue from another municipal court (128-225, 150+924). Mandamus, ¶31.

Mandamus as proper remedy to compel county auditor to exercise his discretion in letting bids for the construction of a state rural highway where he refuses to act, not because the bids are not acceptable, but on the erroneous ground that the project has been abandoned by the county board (see 132-36, 155+1048). Mandamus, ¶92.

Mandamus will not issue to compel the revocation of a building permit for a defect which has been corrected or which the parties are ready and willing to correct (134-73, 158+730). Mandamus, ¶15.

Compelling city council of Brainerd to entertain citizens' petition to remove city officers (121-182, 141+97, 46 L. R. A. [N. S.] 9). Mandamus, ¶76.

While mandamus will not lie to control the discretion of a city council in issuing a liquor license, it may issue where the council in denying a license, acts on the assumption that it is prohibited by an initiative ordinance, and not in the exercise of its discretion in respect to the particular license (134-355, 159+792). Intoxicating Liquors, ¶74.

Mandamus will not lie to control the action of a private officer in matters depending upon judgment or discretion; but, if the admitted facts show that it is his duty to perform an official act, he may be compelled to do so by mandamus (126-367, 148+306). Mandamus, ¶71, 72.

In view of § 6183, giving a stockholder the right to inspect the corporate books, mandamus will lie under this section, at the instance of the president and majority stockholder of a corporation, to compel an inspection of the books of the corporation, to enable relator to resist a charge of embezzlement of the corporate funds; a mere charge of crime not putting him in the attitude of one coming into court with unclean hands (135-479, 160+486). Mandamus, ¶129.

Necessary showing—A person seeking to compel by mandamus a town board to exercise its discretion in repairing a public road must show a clear right to the relief demanded (133-160, 157+1092). Mandamus, ¶94.

Who are parties—In mandamus to compel the repair of public roads, the persons composing the town board may properly be made defendants (133-160, 157-1092). Mandamus, ¶151(2).

Plaintiff in an action in a municipal court, not being party or privy to the judgment in mandamus proceedings, was not bound thereby (126-264, 148+66). Judgment, ¶707.

8267. On whose information, and when—

Where a judgment was reversed without specific direction for a new trial, and plaintiff's motion in the court below for amendment of the findings and for judgment in her favor was granted, whereupon defendant filed a motion in the trial court to vacate the order so made or to grant a new trial, and such motion was overruled, defendant's remedy is appeal, and not mandamus in the supreme court to compel the award of a new trial (128-530, 149+1070). Mandamus, ¶4(1).

Special interest of relator (121-182, 141+97, 46 L. R. A. [N. S.] 9). Mandamus, ¶22.

8268. Alternative and peremptory writs—Contents—

A petition and writ seeking to compel the members of a town board to repair a public road held to be too vague and indefinite to show a clear right to the relief demanded (133-160, 157+1092). Mandamus, ¶154(3).

Where it is obvious that the reason for the action of the city council in refusing to issue a liquor license is not within the personal knowledge of the relator, he may allege such reason on information and belief (134-355, 159+792). Mandamus, ¶154(3).

Mandamus will not issue to compel a railroad company to comply with an ordinance directing it to lower its tracks at a crossing and construct a bridge for street traffic, where the lowering of the track will affect many other crossings in the vicinity, and the ordinance is silent as to such streets (135-277, 160+773). Mandamus, ¶15.

8271. Answer—When and how made—

In mandamus to compel construction of extension of street railway in obedience to municipal ordinance, answer held to present issue of reasonableness as against demurrer (122-163, 142+136). Mandamus, ¶165.

8272. Default—New matter—Demurrer—

Scope and effect of demurrer (121-182, 141+97, 46 L. R. A. [N. S.] 9). Mandamus, ¶166½.

8273. Pleadings—Issues, trial, etc.—

What constitute pleadings; motion for judgment on (129-181, 151+970). Pleading, ¶350(1).

8276. Jurisdiction of district and supreme courts—

In view of this section, an original application to the supreme court for a writ directing the district court to transfer an action to another county will not be entertained, the clerk's refusal to transmit the papers not being the refusal of the court; and mandamus to coerce him is within the exclusive jurisdiction of the district court (125-522, 146+480). Courts, ¶207(4).

Dismissal of appeal on question becoming moot (see 129-535, 152+654). Appeal and Error, ¶781(1).

PROHIBITION**8278. Issuance and contents—**

161+164; note under § 4200.

The writ lies where a court is about to exercise judicial power in a matter in which it never had jurisdiction, and where there is no adequate remedy by appeal, certiorari, or writ of error (135-99, 160+198). Prohibition, ¶10(2).

HABEAS CORPUS**8283. Who may prosecute writ—**

One imprisoned under an excess sentence improperly imposed under § 8491, because the former conviction was not alleged in the indictment, may, after serving the maximum term provided by the statute denouncing the offense of which he was convicted, sue out habeas corpus and secure his discharge, since the judgment, to the extent of the excess sentence, was rendered without jurisdiction, and petitioner was not required to resort to appeal or writ of error (132-295, 156+127). Habeas Corpus, ¶30; Indictment and Information, ¶114.

Ordinarily the object of the writ is to inquire whether one is restrained of his liberty legally, but in cases involving the custody of an infant the personal freedom of the infant is not involved. In such case the writ is used, not merely to determine the legal right of custody as between applicants therefor, but to accomplish the best interests of the child. The juvenile court act (§§ 7162-7175) does not abrogate the remedy by habeas corpus to determine the custody of infants; and the general plan of that act, in respect to delinquent and dependent children, is not interfered with by a determination in habeas corpus which secures the welfare of the child (123-508, 144+157). Habeas Corpus, ¶99(3).

The proceeding is of a civil nature distinct from the criminal prosecution concerning which the writ issues (123-84, 142+1051). Habeas Corpus, ¶1.

One at liberty on bail who voluntarily causes one of his bondsmen to surrender him into custody is not entitled to sue out writ of habeas corpus (162+353). Habeas Corpus, ¶11.

The courts will not try the question of a prisoner's guilt or innocence, nor will they, on the ground that the proceedings were instituted in bad faith or from ulterior motives, review the action of the Governor in granting an extradition warrant (126-38, 147+708). Habeas Corpus, ¶92(2).

8284. Petition—To whom and how made—

It is the practice of the supreme court to refuse to issue the writ in ordinary cases unless the circumstances are exceptional. Proceeding entertained, where all parties consented thereto, and an early determination of the question presented seemed desirable (127-102, 148+896, L. R. A. 1915B, 95). Habeas Corpus, ¶41.

Petitions for writs of habeas corpus, unless made to the supreme court, should be addressed to the district court; and, while the court commissioner may grant them, they should be tested in the name of the presiding judge, though attestation in the name of the court commissioner is mere defect of form, cured by § 8288 (124-456, 145+167). Habeas Corpus, ¶47(2), 53.

8288. When sufficient—

124-456, 145+167; note under § 8284.

8297. Held under process, when discharged—

The determination of a committing magistrate will not be disturbed on habeas corpus, where the record discloses evidence reasonably tending to support it (124-456, 145+167). Habeas Corpus, ¶102.

Where respondent justifies under a commitment showing a valid conviction, but an unauthorized sentence, it is proper, in releasing petitioner from detention, to remand him to the proper court for further proceedings (125-304, 146+1102). Habeas Corpus, ¶109.

8300. Notice—To whom given—In criminal cases, if the prisoner is confined in a town, village, city or county jail, notice of the time and place at which the writ is returnable shall be given to the county attorney of the county from which the prisoner was committed, if such county attorney is within his county; if the prisoner is confined in a state institution, said notice shall be given to the attorney general, whose duty it shall be to appear for the person named as respondent in said writ; in other cases, like notice shall be given to any person interested in continuing the custody or restraint of the party seeking the aid of such writ. (Amended '15 c. 227 § 1)

8311. Appeal to supreme court—

An appeal from an order denying a writ and remanding the prisoner does not stay the criminal proceedings, so as to prevent commitment under the conviction (123-84, 142+1051). Habeas Corpus, ¶113(8).

An order discharging relator is appealable, though no stay was obtained in the court below (135-320, 160+858). Habeas Corpus, ¶113(3).

8312. Hearing on appeal—

135-320, 160+858; note under § 8311.

Relator, having made no application under this section, is in no position to invoke its provisions (124-456, 145+167). Habeas Corpus, ¶113(6).

CERTIORARI

8313. Within what time writ issued—

If an appeal lies under § 8001, certiorari is not an available remedy (161+1055). Certiorari, ¶5(1).

Certiorari, based on stipulation, and not on judgment entered, dismissed (127-519, 148+1082).

It is not necessary that all the petitioners in a ditch proceeding sought to be reviewed on certiorari be named as respondents (161+714). Drains, ¶37.

A writ issued to the judge of a district court, instead of to the district court, is not erroneous (161+714). Certiorari, ¶45.

A judgment awarding compensation under the workmen's compensation act may be opened on sufficient showing of newly discovered evidence, even after the lapse of the 60-day period for review by certiorari (134-189, 158+825). Master and Servant, ¶411.

Appealability of order denying motion to dismiss (see 129-300, 152+541). Certiorari, ¶70(1).

8314. When served—

On certiorari to review the action of respondent judge in a ditch proceeding, it was not necessary to serve a copy of the order allowing the writ. On certiorari to review the proceedings of respondent judge in a ditch proceeding, service of the writ upon the attorney for the petitioners in such proceeding was sufficient notice to them (161+714). Drains, ¶37.

8315. Surety for costs in civil case—

161+714.

8317. When dismissed—Costs—

Appealability of order denying a motion to dismiss (see 129-300, 152+541). Certiorari, ¶70(1).

CHAPTER 89

ASSIGNMENTS FOR BENEFIT OF CREDITORS

8326. Requisites—

An assignment is the exercise of a common-law right, and the assignee derives his title and power of sale from the deed of assignment, and not under the statute; and absence of approval of a sale by the court does not render the sale void, but only voidable (125-24, 145+404). Assignments for Benefit of Creditors, ¶240, 244, 246.

A sale of land by an assignee, in which all parties interested acquiesced, is not open to objection more than ten years thereafter, where the assignee was discharged after such sale was made on the ground that he had fully performed his trust (125-24, 145+404). Assignments for Benefit of Creditors, ¶250.

Nature of interest of creditor in assigned estate; garnishment thereof (see 130-392, 153+740). Assignments for Benefit of Creditors, ¶184; Garnishment, ¶31.

SUPP.G.S.MINN.'17—50

CHAPTER 91

CONTEMPTS

8353. Direct contempts defined—

128-153, 150+383.

8355. Power to punish—Limitation—

The maximum sentence that may be imposed for a direct contempt by the Minneapolis municipal court is a fine of \$20 or two days' imprisonment in the county jail (125-304, 146+1102). Contempt, \S 72.

8363. Punishment—

The maximum sentence that may be imposed by the Minneapolis municipal court for a direct contempt is a fine of \$20 or two days' imprisonment in the county jail (125-304, 146+1102). Contempt, \S 72.

CHAPTER 92

WITNESSES AND EVIDENCE

WITNESSES

8369. Definition—

130-256, 153+324; 130-256, 153+593.

8370. Subpoena, by whom issued—

131-116, 154+750.

8373. Contempt—

131-116, 154+750.

8375. Competency of witnesses—

Subd. 1—Under this section a wife is not a competent witness against her husband in a prosecution for adultery (131-97, 154+735). Witnesses, \S 58(1).

Where one accused of murder attempted to create the impression by his testimony that his wife was unduly intimate with a witness for the prosecution, and that the wife and the witness had plotted to secure defendant's conviction, it was not improper to ask defendant, on cross-examination, if he would consent to his wife testifying for the state (128-422, 151+190). Witnesses, \S 76(3), 277(1).

Action of county attorney in calling wife as a witness against her husband was not misconduct requiring a new trial, though defendant notified the county attorney before the indictment that he would object to the evidence of the wife (128-187, 150+793, Ann. Cas. 1915D, 360). Criminal Law, \S 700.

Subd. 4—A patient may waive his right to prevent his physician giving testimony which is privileged under this subdivision; and if he fails to object to a question which necessarily calls for testimony which is privileged, after a fair opportunity is given him to object, he waives the right to object (131-209, 154+960). Witnesses, \S 221.

This subdivision merely prescribes a rule of evidence, and does not prevent action for money had and received to recover money paid by the patient to the physician in consideration of the latter's guaranty to cure him of a certain disease, which consideration fails (123-468, 143+1133). Money Received, \S 6(6).

The physician is in no position to urge the statute as a bar to the action, where he has been allowed to testify fully in regard to the transactions involved (123-468, 143+1133). Witnesses, \S 219(5).

Where waiver of the privilege under this subdivision was procured by fraud, it is error to allow the privilege to be claimed; and hence the trial court's finding that such waiver, executed by a juror whose sanity during the trial was challenged on a motion for a new trial, was procured by misrepresentation, should be sustained (123-173, 143+322). Witnesses, \S 219(4).

The testimony of a physician as to the instructions given his patient, and as to whether the patient obeyed them, is within the privilege conferred by this section (124-466, 145+385). Witnesses, \S 211(2).

A patient does not waive his privilege by bringing an action to recover for the injuries for which the physician treated him, unless the action is against the physician for malpractice. Neither does he waive such privilege by presenting evidence in support of his claim,

where such evidence is confined to matters outside his transaction with the physician (124-466, 145+385). Witnesses, *§*219(4, 5).

Where, in a will contest, the issue was as to the mental condition of testator, the exclusion of the evidence of a physician will not be disturbed on appeal, where there was no offer to show that the ailment which the doctor was treating had any relation to testator's mental condition (126-275, 148+117). Wills, *§*322.

The testimony of physicians making an examination of plaintiff to ascertain his physical ability to work, their information not being obtained for the purpose of treating or acting for him, is not privileged (128-360, 150+1091). Witnesses, *§*209.

8376. Accused—

The action of a court in calling the attention of the jury to the fact that accused had not been present in court during the trial was a violation of this section, though no direct reference was made to the failure of the defendant to testify (126-45, 147+822). Criminal Law, *§*856(1).

It was not prejudicial misconduct on the part of the county attorney to comment on the fact that defendant had refused his consent to the placing of defendant's wife on the stand as a witness for the state (128-422, 151+190). Criminal Law, *§*721½(1).

An alleged allusion by the county attorney to defendant's failure to testify is not ground for reversal, unless the record directly states that the allusion was made (129-402, 152+769). Criminal Law, *§*1086(11).

Extent of cross-examination of accused as witness in his own behalf (see 135-159, 160+677). Witnesses, *§*277(1, 2).

Charge as to interest of accused testifying in his own behalf, disapproved (see 130-84, 153+271). Criminal Law, *§*822(15).

8377. Examination by adverse party—

In general—Where a party is afforded ample opportunity at the trial to cross-examine a witness, error in denying him the right of examination under this section is not prejudicial (131-152, 154+954). Appeal and Error, *§*1048(6).

Where plaintiff fully cross-examined defendant when he appeared as a witness in his own behalf and dismissed him from the stand, there was no error in refusing to permit plaintiff to call defendant for cross-examination under this section (126-426, 148+457, L. R. A. 1915A, 104). Witnesses, *§*283.

Examination as precluding claim of prejudice in instruction (122-20, 141+810).

Who may be called—The right to call an officer of an adverse party for cross-examination under this section is to be determined as the situation is at the time of trial; and there is no right to examine one not an officer at the time of trial, though he was an officer at the time of the transaction involved (132-404, 157+643). Witnesses, *§*276.

The motorman of a street car is not a "managing agent" of the company within the meaning of this section (162+298). Witnesses, *§*276.

Executor, also husband of a devisee, propounding a will for probate, is a mere nominal party, not so interested as to constitute him an adverse party to contestants, within this section, so as to give adversary right to examine him as if under cross-examination (162+515). Witnesses, *§*276.

Where an election is contested on the ground that the contestees voted illegally, such contestees may be called as adverse parties for cross-examination (126-298, 148+276). Witnesses, *§*276.

Scope of examination—Where a party is an unwilling witness, considerable latitude should be allowed in examining him (123-476, 144+154). Witnesses, *§*275(1).

Contradiction and impeachment of witness—The party calling his adversary under this section may impeach or contradict him, and the attention of a witness may be called to testimony given by an adverse witness, and he may be asked if such testimony is true (126-239, 148+102, Ann. Cas. 1915D, 888). Witnesses, *§*276, 324, 400(2).

In a civil action for assault, the court did not abuse its discretion in permitting plaintiff to be interrogated as to a prior independent assault committed by her on a third person, to shake her credibility; but defendant was improperly permitted to subsequently introduce testimony contradicting the answers so elicited (124-284, 144+956). Witnesses, *§*349, 405.

In what actions or proceedings—This section has no reference to proceedings for the appointment of a guardian for an incompetent person under §§ 7433-7435 (128-324, 151+130). Insane Persons, *§*33(1).

8378. Conversation with deceased or insane person—

Who competent—In an action to set aside a deed to defendant, executed by plaintiff's intestate, defendant's wife may testify as to conversations had with intestate (132-254, 156+263). Witnesses, *§*159(1).

Since the enactment of § 6814, giving the wife a right to convey her real estate by her separate deed, the husband, in an action involving real estate not the homestead, to which action the wife is a party, is not prohibited by this section from testifying to a conversation with a person since deceased (132-242, 156+260). Witnesses, *§*159(1).

Persons interested in administrator's action to set aside decedent's contract to sell realty may testify as to deceased's conversations and declarations to show loss of memory and delusions as bearing upon her competency; this section being strictly construed (102+1070). Witnesses, *§*159(14).

The agent of defendant insurance company, to whom the insured gave a note for the first premium, and to whom defendant sent the policy after its issue, held not interested in the event of the action, so as to prevent his testifying to conversations with the insured, now deceased (127-215, 149+292). Witnesses, *§*140(16).

Heirs are not incompetent to give in evidence declarations or conversations of the deceased where neither they nor the estate can be made liable for the result of the action (126-58, 147+714, L. R. A. 1915E, 822). Witnesses, *§*140(7).

In a will contest it was improper to permit a legatee to testify to statements made by the testator at the time he executed the will (128-17, 150+213, L. R. A. 1916C, 1214, Ann. Cas. 1916D, 1101). Wills, *§*297(1).

Devisee, voluntarily entering upon a contest opposing probate of a will, asserts such an interest in the issue as to preclude his testimony as to conversations with testator as to his intention in disposing of his property (162+515). Witnesses, *§*140(6).

Offer to show incompetency of witness under this section, on the ground of "interest in the event of the action," held insufficient, as importing merely a nudum pactum (124-386, 145+116, Ann. Cas. 1915B, 734). Witnesses, *§*140(9), 182.

Conclusions of witness—Deductions or conclusions of witness from conversation with deceased party prohibited (121-352, 141+481). Witnesses, *§*144(1).

Waiving objections—One entitled to object to evidence of conversations with a deceased person waives such right by calling the witness to such conversations and cross-examining him in reference thereto. Such waiver takes place, though the questions propounded to the witness are confined to the question as to what the witness said to deceased (128-277, 150+914). Witnesses, *§*181.

By cross-examining an interested party relative to conversations with a deceased person, the cross-examining party waives the right given by this section to exclude such testimony; and the party examined may give further testimony as to such conversations at any appropriate time in the trial, though not questioned relative thereto on redirect (133-136, 157+1073). Witnesses, *§*181.

DEPOSITIONS

8393. Informalities and defects—Motion to suppress—

Motion to suppress for refusal of witness to answer material questions on cross-examination must be made within ten days from notice of return of the deposition (128-525, 151+416). Depositions, *§*83(4).

8395. Deposition, not used when—

Where the deposition of a witness is taken outside of the state, and in it the witness testifies that he is a nonresident of this state, no further proof of cause for using the deposition is required (162+449). Depositions, *§*90.

JUDICIAL RECORDS—STATUTES, ETC.

8414. Printed copies of statutes, etc.—

Both the daily printed journal and the permanent journal are made evidence of the legislative proceedings by this section (130-424, 153+749). Statutes, *§*285, 286. See notes under *§* 41, ante, and under Const. art. 4 *§* 21.

DOCUMENTARY EVIDENCE

8423. Official records—Certified copies—

This section has no application to foreign records and documents, when authenticated and certified in accordance with the act of Congress (129-347, 152+729). Evidence, *§*348(2).

MISCELLANEOUS PROVISIONS

8437. Account books—Loose-leaf system, etc.—

In an action on account, a loose-leaf ledger page was admissible as evidence of payments entered thereon; there being no evidence that the moneys so received were entered in any other place than in such ledger (127-535, 149+647). Evidence, *§*354(2).

When one party offers in evidence the books of account of the other party as admissions, it is not necessary to lay the foundation required by this section when the party offers his own books of account; but it is sufficient if it appears that the books offered are the books of account of the party regularly kept in his business (126-464, 148+459). Evidence, *§*376(2).

Need not be verified by the clerks who made the entries (128-422, 151+190). Criminal Law, *§*444.

8441. Minutes of conviction and judgment—

Where the judgment roll, offered in evidence to show defendant's prior conviction, appears fair on its face, it will be presumed in full force and effect until the contrary is shown (123-413, 144+142). Criminal Law, *§*1202(2).

8448. Bills and notes—Indorsement—Signature to instruments presumed—

The provision of this section that every written instrument purporting to have been executed shall be proof of execution until the person executing it shall deny his signature under oath applies to an instrument purporting to be executed by a corporation, and to a contract of employment by the corporation, and the fact that one of two corporate officers executing it has died before the trial does not render the statute inapplicable; the statute not being confined to promissory notes or bills of exchange (131-386, 155+214). Pleading, *§* 291(2).

This section applies to instruments executed by corporations, and denial of execution must be by the oath of an officer or representative of the corporation who is shown to have sufficient knowledge of the facts to be able to state authoritatively that the corporation did not execute the instrument (132-211, 156+265). Pleading, *§* 291(2).

Denial of execution of an instrument by a stockholder of the corporation executing it is insufficient under this section, where it is not shown that such stockholder possesses any knowledge concerning the corporate business transactions (132-211, 156+265). Pleading, *§* 301(3).

Where a corporation denies the execution of notes, and one of its officers, shown to have authority, testifies that such notes were not executed by the corporation, this section does not make the fact that the notes purport to have been executed by the corporation evidence of such execution (134-445, 159+1078). Corporations, *§* 519(3).

8449. Indorsement of money received—

To make this section applicable, the burden of proof is on the holder of a note containing an indorsement of payment to prove by evidence dehors the indorsement, that the payment was made at a time when it was against the interest of the holder to make it (133-289, 158+391). Bills and Notes, *§* 496(3).

8450. Land office receipts, etc., evidence of title—

Section 6880 imposes upon the examiner under the Torrens act the duty to make his investigation full and thorough, and he is not justified in relying upon a receipt or certificate issued to an entryman by a local land office as establishing that the United States has parted with its proprietary title (130-456, 153+871). Records, *§* 9(10).

8453. Federal census—Population—

123-48, 142+1042.

[8456—]1. Abstracts of title—In any action wherein the title to real property is in controversy, any abstract of title thereof, duly certified by any bonded abstractor or by any Register of Deeds of any county wherein said real property is situated, shall be received as prima facie evidence of all instruments therein referred to, together with the records thereof as recorded in the office of the Register of Deeds of such county. ('15 c. 283 § 1)

8459. Fact of marriage, how proved—

Evidence held insufficient to establish a common-law marriage. Elements of such a marriage stated (122-407, 142+593). Marriage, *§* 18, 40(4), 50(5).

8462. Confession, inadmissible when—

Evidence held insufficient to show that accused burned prosecutor's barn, so as to support his conviction, based solely on an alleged confession (128-163, 150+787). Arson, *§* 37(1).

8463. Uncorroborated evidence of accomplice—

To make a witness an "accomplice," it must appear that a crime has been committed by the person on trial, either as principal or accessory, and that the witness co-operated with, aided, or assisted in the commission of the crime, either as principal or accessory (135-159, 160+677). Criminal Law, *§* 507(1).

A woman to whom liquor is furnished, contrary to § 3148, is not an accomplice of the person selling the liquor (124-408, 145+39). Criminal Law, *§* 507(1).

The corroborating evidence need not be sufficient in itself to support a conviction (122-493, 142+823). Criminal Law, *§* 511(1).

The corroboration of an accomplice need not be sufficient, standing alone, to make out a prima facie case of guilt, nor is it necessary that it should cover every fact necessary to proof of the crime; but it is sufficient that the testimony, independent of that of the accomplice, tends in some reasonable degree to establish guilt of defendant. Evidence held sufficient to corroborate the testimony of an accomplice, so as to sustain a conviction (131-276, 154+1095). Criminal Law, *§* 511(1).

A confession may be sufficient corroboration (131-276, 154+1095). Criminal Law, *§* 511(7).

Rulings of trial court in giving and refusing instructions as to accomplice testimony held not erroneous or prejudicial (135-159, 160+677).

8465. Divorce—Testimony of parties—

Sufficiency of corroborative testimony (see 126-65, 147+825). Divorce, *§* 127(4).

PART IV

CRIMES, CRIMINAL PROCEDURE, IMPRISONMENT, AND PRISONS

CHAPTER 93

GENERAL PROVISIONS

8467. Meaning of words and terms—

127-510, 150+209.

8477. Principal defined—

One purchasing intoxicating liquor sold contrary to law for the purpose of prosecuting the seller for an unlawful sale does not thereby become an "accomplice" within this section (162+683). Criminal Law, §507(4).

Evidence held to support a conviction of defendant as a principal to the crime of robbery (122-493, 142+823). Robbery, §24(1).

8490. Attempts—How punished—

An attempt to commit a crime is the commission of some specific intentional overt act, or acts tending directly, in the natural course of events, to the commission of the crime. The mere act of soliciting another to commit a crime, or preparation therefor, is not, in the absence of some overt act looking to its actual commission, sufficient to justify a conviction. In this case evidence held insufficient to show an overt act, essential to an attempt to commit extortion (131-65, 154+737). Criminal Law, §§44, 45; Extortion, §15.

8491. Second offences, how punished—

This section is not invalid as subjecting to double jeopardy (123-413, 144+142). Criminal Law, §162.

In the absence of statute regulating the procedure, the fact of the prior conviction must be alleged in the indictment, established by proper evidence, and passed upon by the jury (123-413, 144+142). Criminal Law, §1202(1).

Though alleged in the indictment, it is unnecessary for the state to prove that the former conviction has not been reversed or set aside; it being presumed that it remains in full force and effect, where the judgment roll is fair on its face (123-413, 144+142). Criminal Law, §1202(2).

To warrant imposition of the excess sentence, the former conviction must be alleged in the indictment; but an excess sentence, imposed without such averment, is not wholly void; but only as to the excess, and after serving the maximum sentence the prisoner may be discharged on habeas corpus (132-295, 156+127). Habeas Corpus, §30(2); Indictment and Information, §114.

8496. Suspension of sentence—

Suspension of sentence for a definite period held proper, and within the discretion of the court (125-529, 147+273). Criminal Law, §1001.

8502. Incriminating testimony not to be used—

See notes under Const. art. 1 § 7.

8503. [Repealed.]

See note under § [8503—]1.

[8503—]1. Commitment of children in certain cases—Whenever a juvenile court acquires jurisdiction of a child twelve years of age or over, who is charged with delinquency, and transfers such child to a justice, municipal, or district court to be tried for a crime, the trial court, upon conviction, may commit such child to the state training school for boys or the Minnesota home school for girls. ('17 c. 266 § 1)

Section 2 repeals § 8503.

8504. Convict as witness—

Conviction of any crime, whether a felony or petty misdemeanor, may be proved under this section to impeach a witness. The nature of the crime may be shown (128-474, 151+180, Ann. Cas. 1916A, 277). Witnesses, §345(4).

The prosecuting attorney may cross-examine accused, testifying as a witness in his own behalf, as to the circumstances of an assault, of which he testified on direct examination he was convicted (135-159, 160+877). Witnesses, ¶277(1, 2).

Where there is no conviction, evidence to show indictment for crime is properly excluded under this section (130-314, 153+611, L. R. A. 1915F, 11). Witnesses, ¶345(1).

CHAPTER 94

RIGHTS OF ACCUSED

8508. Presumption of innocence—Conviction of lowest degree, when—

Burden of proof on state—Burden not on defendant to explain possession of stolen property (121-405, 141+483). Larceny, ¶41.

What is reasonable doubt—A definition of reasonable doubt, in an instruction, as "not some purely imaginary, fantastic, or chimerical doubt, but doubt based on reason," was not erroneous (135-211, 160+666). Criminal Law, ¶789(2).

Conviction on evidence of daughter as to incest with father, in face of positive denial by father, held not a violation of the rule as to reasonable doubt (123-128, 143+119). Incest, ¶14.

Evidence held insufficient to prove beyond a reasonable doubt that defendant was guilty of burning a barn in the nighttime (130-347, 153+845). Arson, ¶87(1).

Necessity of charge upon the presumption of innocence—Whether the issue of fact be one of intent or other fact, defendant, is entitled to a charge upon the presumption of innocence, and a failure to give such charge is not rendered harmless by giving a proper charge on reasonable doubt; but, if defendant makes no request for such charge, the omission to give it will not result in a reversal (130-84, 153+271). Criminal Law, ¶778(3), 823(9), 824(6).

Presumption of innocence as affecting civil actions—A mere charge of embezzlement against the president of a corporation, who is also a stockholder, will not preclude mandamus by him to compel inspection of the corporate books to enable him to resist the prosecution, since he is presumed innocent until convicted, and he is not in the attitude of one coming into court with unclean hands (135-479, 160+486). Mandamus, ¶129.

Proof that a foreign-born resident has voted, which act without naturalization is a crime, raises a presumption of naturalization, though it arises from the naturalization of the voter's father (123-119, 143+120). Citizens, ¶10.

8510. Dismissal, when—

The phrase "good cause to the contrary" refers to cause shown when the motion to dismiss the indictment is made. A motion to dismiss is properly overruled, where a case was continued from the September to the November term at defendant's request, the trial at the November term resulted in a disagreement of the jury, and defendant moved to dismiss when the case was again called for trial at the following January term (127-505, 150+171). Criminal Law, ¶576(2, 4).

8513. Counsel for defendant—Compensation—Public defender in counties having 300,000 inhabitants—Whenever a defendant shall be arraigned upon indictment or information for any felony or gross misdemeanor, and shall request the court to appoint counsel to assist in his defense, and satisfied it by his own oath or other required proof that he is unable, by reason of poverty, to procure counsel, such court shall appoint counsel, not exceeding two for such defendant, to be paid, upon his order, by the county in which the indictment was found. Compensation, not exceeding ten (\$10.00) dollars per day for each counsel, for the number of days he is actually employed in the court, shall be fixed by the court in each case; provided that in counties now or hereafter having a population of 300,000 or over the judges of the district court of such county may by a unanimous vote, appoint an attorney at law, a member of the bar in such county to appear for and defend all persons charged with a felony or gross misdemeanor in such county who are unable by reason of poverty to employ counsel. (Amended '17 c. 496 § 1)

Section 8 repeals inconsistent acts, etc.

Compensation ordered under this section in favor of an attorney for defending an indigent, accused of crime, is not exempt from garnishment, as being fees of a state or public officer (128-264, 148+66). Garnishment, ¶63.

[8513—]1. **Same—Duties of public defender**—The attorney so appointed as aforesaid shall be known as the public defender of county. He shall appear for and defend all persons charged with any felony or gross mis-

demeanor whenever it shall appear to the court that the person accused is unable by reason of poverty to procure counsel. ('17 c. 496 § 2)

[8513—]2. **Same—To appear before board of pardons and parole—**Whenever the committing judge, or the judge in charge of the criminal court, shall deem it advisable he may by order direct the said public defender to appear before the board of pardons, or parole for and on behalf of any applicant for pardon or parole who was committed from such county. ('17 c. 496 § 3)

[8513—]3. **Same—Compensation—**He shall receive compensation for his services as the judges of the district court shall fix, said compensation to be paid by the county in the same manner and at the same time as the salary of other county officials. ('17 c. 496 § 4)

[8513—]4. **Same—Term of office—**The term of office of the public defender shall be four (4) years, but he may be re-appointed as often as the majority of the judges of the district court shall concur in such re-appointment. ('17 c. 496 § 5)

[8513—]5. **Same—Assistants—**He shall have the power to appoint and remove his assistants and number and compensation of which shall be fixed by the judges of the district court, by an order filed with the county auditor. Their compensation shall be paid by the county in the same manner and at the same time as the salaries of other county officials. ('17 c. 496 § 6)

[8513—]6. **Same—To appear for criminals who plead guilty on information—**The public defender shall also appear for and on behalf of criminals who shall have pleaded guilty on information as provided in section 9162, General Statutes of 1913, in counties now or hereafter having a population of 300,000 or over. ('17 c. 496 § 7)

CHAPTER 95

CRIMES AGAINST THE SOVEREIGNTY OF THE STATE

[8521—]1. **Interfering with enlistment by printing or writing, etc.—**It shall be unlawful from and after the passage of this act for any person to print, publish or circulate in any manner whatsoever any book, pamphlet, or written or printed matter that advocates or attempts to advocate that men should not enlist in the military or naval forces of the United States or the state of Minnesota. ('17 c. 463 § 1)

[8521—]2. **Same—By word of mouth—**It shall be unlawful for any person in any public place, or at any meeting where more than five persons are assembled, to advocate or teach by word of mouth or otherwise that men should not enlist in the military or naval forces of the United States or the state of Minnesota. ('17 c. 463 § 2)

[8521—]3. **Same—Teaching or advocating against aid in war—**It shall be unlawful for any person to teach or advocate by any written or printed matter whatsoever, or by oral speech, that the citizens of this state should not aid or assist the United States in prosecuting or carrying on war with the public enemies of the United States. ('17 c. 463 § 3)

[8521—]4. **Same—"Citizen" defined—**A citizen of this state for the purposes of this act is hereby defined to be any person within the confines of the state. ('17 c. 463 § 4)

[8521—]5. **Same—Gross misdemeanor—**Any person violating any provisions of this act is hereby declared to be guilty of gross misdemeanor and shall be punished therefor by a fine of not less than one hundred dollars, (\$100.00) nor more than five hundred dollars, (\$500.00), or by imprisonment in the county jail for not less than three months nor more than one year, or by both. ('17 c. 463 § 5)

[8521—]6. **Same—Officers who may arrest**—Any police or peace officer of this state, or any regularly commissioned officer in the army or navy of the United States or of the national guard or organized militia of the state of Minnesota is hereby authorized to summarily arrest any person violating any provisions of this act. ('17 c. 463 § 6)

[8521—]7. **Subjects of nation at war with United States forbidden to have fire arms, explosives, etc.**—It shall be unlawful for any citizen or subject of any nation with which the United States is at war, and who has not declared his intention to become a citizen of the United States, to have in his possession or under his control any firearms of any kind or nature whatsoever, or any explosives of any kind or nature whatsoever, or the necessary ingredients of any explosives from which explosives could be manufactured. Provided, however, that any person, having in his possession or in his control any such forbidden article shall have five (5) days from and after the passage of this act to dispose of the same. ('17 c. 435 § 1)

See §§ [8800—]1, [8800—]2.

[8521—]8. **Same—Gross misdemeanor**—Any person violating any provision of this act shall be guilty of gross misdemeanor and shall be punished by a fine of not less than one hundred dollars, (\$100.00) nor more than five hundred dollars, (\$500.00), or by imprisonment in any county jail in this state for not less than sixty (60) days nor more than one year, or by both. ('17 c. 435 § 2)

[8521—]9. **Same—Arrests**—Any police officer of this state is hereby authorized to summarily arrest any person violating any of the provisions of this act. ('17 c. 435 § 3)

CHAPTER 96

CRIMES AGAINST PUBLIC JUSTICE

BRIBERY AND CORRUPTION

8526. Asking or receiving bribes—

Cited (134-26, 158+790).

8538. Interfering with public officers—

Evidence held to sustain a conviction of resisting an officer in the performance of his duty (135-211, 160+666). Obstructing Justice, ¶16.

PERJURY AND OTHER CRIMES

8576. Resisting public officer—

Where the offense of which defendant was charged was clearly embraced in § 8538, it was proper to refuse to charge on simple misdemeanor under this section (135-211, 160+666).

8582. Criminal contempts—

Criminal contempt defined (see 128-153, 150+383). Contempt, ¶3.

[8596—]1. **Criminal syndicalism defined—Advocacy of, felony**—Criminal syndicalism is hereby defined as the doctrine which advocates crime, sabotage, (this word as used in this bill meaning malicious damage or injury to the property of an employer by an employé) violence or other unlawful methods of terrorism as a means of accomplishing industrial or political ends. The advocacy of such doctrine, whether by word of mouth or writing is a felony punishable as in this act otherwise provided. ('17 c. 215 § 1)

[8596—]2. **Same—Teaching or advocating syndicalism, felony**—Any person who by word of mouth or writing, advocates or teaches the duty, necessity or propriety of crime, sabotage, violence or other unlawful methods of terrorism as a means of accomplishing industrial or political ends, or prints,

publishes, edits, issues or knowingly circulates, sells, distributes or publicly displays any book, paper, document or written matter in any form, containing or advocating, advising or teaching the doctrine that industrial or political ends should be brought about by crime, sabotage, violence or other unlawful methods of terrorism; or openly, wilfully and deliberately justifies by word of mouth or writing, the commission or the attempt to commit crime, sabotage, violence or other unlawful methods of terrorism with intent to exemplify, spread or advocate the propriety of the doctrines of criminal syndicalism, or organizes or helps to organize or becomes a member or voluntarily assembles with any society, group or assemblage of persons formed to teach or advocate the doctrine of criminal syndicalism, is guilty of a felony and punishable by imprisonment in the state prison for not more than five years or by a fine of not more than one thousand dollars or both. ('17 c. 215 § 2)

[8596—]3. **Same—Assembling for purpose of advocating, etc., felony—** Wherever two or more persons assemble for the purpose of advocating or teaching the doctrines of criminal syndicalism defined in this act, such an assemblage is unlawful and every person voluntarily participating therein by his presence, aid or instigation is guilty of a felony and punishable by imprisonment in the state prison for not more than 10 years or by a fine of not more than \$5,000.00 or both. ('17 c. 215 § 3)

[8596—]4. **Owner, etc., of building permitting assemblage guilty of gross misdemeanor—** The owner, agent, superintendent, or occupant of any place, building or rooms who wilfully and knowingly permits therein any assemblage of persons prohibited by the provisions of section 3 of this act [8596—3], or who, after notification that the premises are so used, permits such use to be continued, is guilty of a gross misdemeanor and punishable by imprisonment in the county jail for not more than one year or by a fine of not more than \$500.00 or both. ('17 c. 215 § 4)

CHAPTER 97

CRIMES AGAINST THE PERSON

HOMICIDE

8601. Defined and classified—

Cited (123-276, 143+782).

8602. Proof of death, and of killing by defendant—

Evidence held not to leave it to conjecture and speculation as to the cause of the death of decedent (123-487, 144+216). Homicide, Ⓒ236(1).

Evidence held sufficient to establish the corpus delicti, and that death resulted from the wounds inflicted (123-276, 143+782). Homicide, Ⓒ228(4).

8603. Murder in first degree—

Evidence held to sustain conviction of murder in the first degree (135-159, 160+677). Homicide, Ⓒ253(1).

Evidence held sufficient to show that decedent's death resulted from poison, but insufficient to show that it was administered by defendant (135-200, 160+491). Homicide, Ⓒ234(1).

8606. Murder in third degree—

Cited in dissenting opinion (131-427, 155+399).

8610. Killing of unborn child or mother—

Evidence held to support a conviction under this section (134-384, 159+829). Homicide, Ⓒ250.

Evidence held to support a conviction of manslaughter resulting from the commission of an abortion on a pregnant woman (131-252, 154+1083, L. R. A. 1916C, 566). Homicide, Ⓒ250.

Evidence held to sustain a conviction under this section (122-91, 141+1113). Homicide, Ⓒ255.

8612. Manslaughter in second degree—

An allegation of an intent to kill is not necessary in an indictment for manslaughter in the second degree, nor is an allegation that the act or neglect with which the defendant was charged was not done without a design to effect death. A parent, who by culpable negligence fails to provide medical assistance for a child wholly incapable of supplying its own wants, and so causes its death, is guilty of manslaughter in the second degree (126-396, 148+283). Homicide, *§* 78.

A medical man, or one assuming to act as such, is guilty of "culpable negligence," within the third subdivision of this section, where he has exhibited gross incompetency, or inattention or wanton indifference to his patient's safety (127-282, 149+297, L. R. A. 1915D, 201). Homicide, *§* 78.

An indictment against a physician for manslaughter through culpable negligence need not allege knowledge on defendant's part of probability of consequences from the acts or omissions charged, nor his duty in the premises, nor that his negligence was "culpable" or of any other degree *eo nomine*, nor set out defendant's acts in any other than general terms and as ultimate facts (127-282, 149+297, L. R. A. 1916C, 584). Homicide, *§* 134.

The indictment in such case, for manslaughter committed in connection with the operation of an X-ray machine, held sufficient as against a demurrer on the ground that the facts were not stated with sufficient certainty to set forth a public offense (127-282, 149+297, L. R. A. 1916C, 584). Indictment and Information, *§* 147.

8623. Homicide by other person, justifiable when—

Jury's finding that defendant committing admitted homicide was not acting in justifiable self-defense held sustained by evidence (162+358). Homicide, *§* 244(1).

KIDNAPPING**8628. Defined—How punished—**

Subd. 1—Evidence held to sustain a conviction under this subdivision (127-445, 149+945). Kidnapping, *§* 5.

ASSAULT**8631. Assault in first degree defined—How punished—**

Cited (132-295, 156+127).

8632. Assault in second degree defined—How punished—

Evidence held to support a conviction of assault in the second degree (128-402, 148+280). Assault and Battery, *§* 91.

Subd. 3—The word "willfully" means designedly or intentionally, and if the act was intentionally done defendant could be convicted of assault in the second degree, though he did not intend all the consequences of the act. The assault may be made with the bare hands, and without a weapon (135-76, 160+196). Assault and Battery, *§* 49.

An indictment in the language of the statute sufficiently charges an intent to inflict the harm, as the term "willfully" imports designedly and intentionally (131-427, 155+399). Assault and Battery, *§* 75; Indictment and Information, *§* 88.

Subd. 5—To constitute an assault with intent to rape, there must be an assault and an intent to commit the felony (133-425, 158+793). Rape, *§* 34(1, 2).

There is no distinction between an attempt to commit rape and an assault with intent to commit rape, since the intent must be precisely the same in each case; and hence, where the indictment charged an attempt to commit rape and the evidence showed a violent assault against the victim's will, a verdict acquitting of attempt, but finding defendant guilty of assault in the second degree, must be reversed as inconsistent within itself (133-425, 158+793). Rape, *§* 60.

Under an indictment for resisting a police officer, a conviction of assault in the second degree held not sustained by the evidence (162+683). Assault and Battery, *§* 91.

8633. Assault in third degree—How punished—

The words "assault" and "battery" are to be given their common-law meaning. Unlawfully discharging a firearm to frighten another, though intending not to hit him, is an assault and battery, if the other be hit (131-427, 155+399). Assault and Battery, *§* 57.

That an assault was committed with the fists alone does not necessarily exclude the application of *§* 8632, subd. 3, defining one of the forms of assault in the second degree, since grievous bodily harm may be inflicted with the naked hands (135-76, 160+196). Assault and Battery, *§* 49.

An instruction properly defining assault under this section, but which was given as defining an assault in the second degree was without prejudice, even if erroneous as to the second degree, where defendant was convicted of the third degree (131-427, 155+399). Criminal Law, *§* 1172(8).

In a prosecution under *§* 8538 for resisting an officer, it was not error to fail to charge on assault in the third degree in absence of a request for such instruction (135-211, 160+666). Criminal Law, *§* 795(1).

8634. Force or violence, when lawful—

131-71, 154+662, L. R. A. 1916C, 228.

ROBBERY

8635. Defined—

Cited (161+595).

Evidence held to support a conviction of robbery (128-40, 150+168). Robbery, \S 24(1).

8636. In first degree, how punished—

Evidence held to support a conviction of defendant as principal in the crime of robbery (122-493, 142+822). Robbery, \S 24(1).

LIBEL AND SLANDER

8645. Libel defined—A misdemeanor—

A publication stating that a candidate for office has the backing of certain corporations in the state that are not in sympathy with the masses is not per se libelous (130-138, 153+258). Libel and Slander, \S 10(1).

[8654—]1. Slander—Every person who, in the presence and hearing of another, other than the person slandered, whether he be present or not, shall speak of or concerning any person, any false or defamatory words or language which shall injure or impair the reputation of such person for virtue or chastity or which shall expose him to hatred, contempt or ridicule, shall be guilty of a misdemeanor. Every slander herein mentioned shall be deemed malicious if no justification therefor be shown and shall be justified when the language charged as slanderous, false or defamatory was true and was spoken with good motives and for justifiable ends. ('15 c. 284 § 1)

CHAPTER 98

CRIMES AGAINST MORALITY, DECENCY, ETC.

RAPE—ABDUCTION—CARNAL ABUSE, ETC.

8655. Rape—

The intent is sufficiently alleged by the use of the words "ravish and carnally know" (135-425, 158+793). Rape, \S 21.

Where the indictment alleged an attempt to ravish a female of the age of 14 years, and the evidence showed a violent assault against the will of prosecutrix, a verdict acquitting of attempt, but convicting of assault in the second degree, could not stand, since the verdict is inconsistent within itself, as the same intent is essential to both offenses (133-425, 158+793). Rape, \S 60.

8656. Carnal knowledge of children—

Where the indictment charges an attempt to rape a female of 14, and the evidence shows a violent assault against the will of prosecutrix, a verdict acquitting of attempt, but convicting of assault in the second degree, cannot stand, since it is inconsistent within itself, as the same intent is essential to both offenses (133-425, 158+793). Rape, \S 60.

A conviction may rest on the uncorroborated testimony of prosecutrix, unless such testimony is discredited by facts and circumstances casting doubt upon its truth. In such case defendant will be allowed much latitude in cross-examining prosecutrix, but it is not error to exclude a question as to her testimony before the grand jury, asked for the sole purpose of testing her memory. Requisites of cautionary instruction, as to weighing the testimony of prosecutrix, stated (127-485, 149+944). Rape, \S 52(2), 54(3).

Evidence of acts of defendant tending to destroy the child's modesty and to prepare her physically for coition held admissible, and the evidence was sufficient to sustain conviction (125-315, 146+1115). Rape, \S 46.

Evidence held sufficient to sustain a conviction of carnally knowing a female child of the age of 14 years (162+465). Rape, \S 52(2).

Evidence of other offenses, and election between acts (see 128-187, 150+793, Ann. Cas. 1915D, 360). Criminal Law, \S 369(8), 678(2).

Evidence (see 133-184, 158+48).

CRIMES AGAINST CHILDREN, ETC.

8666. Desertion of child or pregnant wife—Every parent or other person having legal responsibility for the care or support of a child who is under the age of sixteen years and unable to support himself by lawful employment, who deserts and fails to care for and support such child with intent wholly to abandon him; and every husband who, without lawful excuse, deserts and fails to support his wife, while pregnant, with intent wholly to abandon her is guilty of a felony and upon conviction shall be punished therefor by imprisonment in the state prison for not more than five years. Desertion of and failure to support a child or pregnant wife for a period of three months shall be presumptive evidence of intention wholly to abandon. (Amended '15 c. 336; '17 c. 213 § 1)

By 1917 c. 213 § 5 the act takes effect July 1, 1917.

8667. Failure to support wife or child—Every man who, without lawful excuse wilfully fails to furnish proper food, shelter, clothing, or medical attendance to his wife, such wife being in destitute circumstances; and every person having legal responsibility for the care or support of a child who is under sixteen years of age and unable to support himself by lawful employment, who wilfully fails to make proper provision for such child, is guilty of a misdemeanor. But if any person convicted under this section gives bond to the state, in such amount and with such sureties as the court prescribes and approves, conditioned to furnish the wife or child with proper food, shelter, clothing, and medical attendance for such a period, not exceeding five years, as the court may order, judgment shall be suspended until some condition of the bond is violated. The bond may, in the discretion of the court, be conditioned upon the payment of a specified sum of money at stated intervals. Upon the filing of an affidavit showing the violation of any of the conditions of the bond, the accused shall be heard upon an order to show cause, and, if the charge be sustained, the judgment shall be executed. The wife or child, and any person furnishing necessary food, shelter, clothing, or medical attendance to either, may sue upon the bond for a breach of any condition thereof. (Amended '17 c. 213 § 2)

Evidence held insufficient to sustain a conviction for failure to furnish food, shelter, or clothing to minor children (129-389, 152+762). Parent and Child, §=17(6).

8668. Same—Complaint—Warrant—On complaint being made in writing and under oath by the wife or any reputable person to a justice of the peace or judge of a municipal court, accusing any person of the offense defined in section 8667, the justice or judge shall issue his warrant against the person accused, directed to the sheriff or constable of the county, commanding him forthwith, to bring such accused person before the justice or judge to answer such complaint. (Amended '17 c. 213 § 3)

8668-A. Same—Proof of relationship—In any prosecution for desertion of or failure to support a wife or child no other or greater evidence shall be required to prove the relationship of the defendant to such wife or child than is or shall be required to prove such relationship in civil action. ('17 c. 213 § 4)

1917 c. 213 § 4 adds a section to this chapter to be known as section 8668-A.

8683. Cruelty toward children—Every person who shall torture, torment, or cruelly or unlawfully punish any child under the age of eighteen years, or who shall commit any act of cruelty toward such child, shall be guilty of a misdemeanor. (Amended '17 c. 240 § 1)

[8683—]1. **Distribution or employing minors for distribution of certain literature among minors prohibited**—No person shall sell, lend, give away, show, advertise or otherwise offer for loan, gift, sale or distribution to any minor under the age of eighteen years, any book, pamphlet, magazine, newspaper or other printed paper devoted to the publication or largely made up of criminal news, police reports, accounts of criminal deeds, or pictures or stories of deeds of bloodshed, lust or crime; nor shall any person hire, use or em-

ploy a minor under the age of eighteen years to sell or give away, or in any manner distribute, or permit any such minor in his custody or control to sell, give away or in any manner distribute, any material herein described. ('17 c. 242 § 1)

[8683—]2. **Same—Penalty**—Any person who violates any provision of this act is guilty of a misdemeanor. ('17 c. 242 § 2)

8684. Unlawful confinement of lunatic, etc.—Every person who shall confine a lunatic, insane or feeble-minded person in any other manner or in any other place than is authorized by law, or who shall be guilty of harsh, cruel, or unkind treatment of, or neglect of duty toward, any feeble-minded person, lunatic or insane person under confinement, whether lawfully or unlawfully confined, shall be guilty of a misdemeanor. (Amended '17 c. 209 § 1)

ABORTION, ETC.

8697. Concealing birth—Second offense—Every person who shall endeavor to conceal the birth of a child by any disposition of its dead body, whether the child died before or after its birth, shall be guilty of a misdemeanor; and every woman who, having been convicted of endeavoring to conceal the still-birth of any issue of her body, which if born alive would be illegitimate, or the death of such issue under the age of two years, shall, subsequent to such conviction, endeavor to conceal any such birth or death, shall be punished by imprisonment in the state prison for not more than five years. (Amended '17 c. 231 § 1)

BIGAMY—ADULTERY, ETC.

8700. Incest—

Evidence held to support a conviction under this section (123-128, 143+119). Incest, [§14](#).

8701. Crime against nature—

Slandorous charge (see 122-525, 142+1134).

8702. Adultery—

The indictment need not show that a prosecution was commenced on complaint of the husband or wife nor that it was commenced within one year from the date of the offense (123-392, 143+971). Adultery, [§7](#).

If no prosecution has been commenced by an examining magistrate, and the indictment shows that the offense was committed more than one year before a return thereof, such motion to quash will lie (123-392, 143+971). Indictment and Information, [§137\(1\)](#).

The indictment may be returned at any time within three years from the commission of the offense (123-392, 143+971). Criminal Law, [§147](#).

Proceedings by an examining magistrate, by which the accused is held to answer in the district court, constitute a commencement of the prosecution within this section (123-392, 143+971). Criminal Law, [§157](#).

Proceedings by an examining magistrate are required to be certified to and filed in the district court, and thereafter the prosecution is pending in that court (123-392, 143+971). Criminal Law, [§244](#).

If defendant has been held to answer before an examining magistrate, and the offense proven at the trial was committed more than one year before the return of the indictment, whether such offense was the same offense for which he had been held to answer was a question for the jury (123-392, 143+971). Criminal Law, [§739\(4\)](#).

8703. Fornication—

A man and unmarried woman dwelling together and engaging in carnal intercourse are guilty under this section, though they may ostensibly dwell together for some lawful purpose or attempt to conceal their immoral relations (125-497, 147+663). Lewdness, [§1](#).

8703-A. Fornication, when felony—If issue is conceived of fornication, and within the period of gestation or within sixty days after the birth of a living child the father absconds from the state with intent to evade proceedings to establish his paternity of such child, he is guilty of a felony and shall be punished by imprisonment in the state prison for not more than two years. ('17 c. 211 § 1)

1917 c. 211 § 1 adds a section to this chapter, to be known as section 8703-A.

By § 2 the act takes effect January 1, 1918.

8704. Exposure of person—Public indecency—

Slandorous imputation (see 122-525, 142+1134).

8705. Obscene literature—Sale, etc.—Every person who—

1. Shall sell, lend, give away, or offer to give away, show, have in his possession with intent to sell, give away, show, advertise, or otherwise offer for loan, gift, sale, or distribution, any obscene or indecent book, magazine, pamphlet, newspaper, story paper, writing, picture, drawing, photograph, or any article or instrument of indecent or immoral character; or who shall design, copy, draw, photograph, print, utter, publish, or otherwise prepare such a book, picture, drawing, paper, or other article; or write or print, or cause to be written or printed a circular, advertisement, or notice of any kind, or give oral information stating when, where, how, or of whom or by what means such an indecent or obscene article or thing can be purchased or obtained; or

2. Shall exhibit upon any public road, street, or other place within view of any minor any of the books, papers, or other things hereinbefore enumerated; or

3. Shall hire, use, or employ any minor to sell or give away, or in any manner distribute, or shall permit any minor in his custody or control to sell, give away, or in any manner distribute, any of the articles hereinbefore mentioned—

Shall be guilty of a gross misdemeanor, and be punished by imprisonment in the county jail for not more than one year nor less than ninety days, or by a fine not less than one hundred dollars nor more than five hundred dollars, or by both. (Amended '17 c. 241 § 1)

Uttering obscene language at a public assemblage held a violation of a city ordinance denouncing obscenity, though the language was a quotation from a standard work on theology (130-532, 153+305). Obscenity, ¶8.

8712. Keeper of disorderly resort—

Cited (126-95, 147+953).

Acts not sufficient to constitute an offense under this section may render a saloon keeper liable on his bond for failing to keep a "quiet and orderly house" (131-136, 154+795, L. R. A. 1916E, 269). Intoxicating Liquors, ¶86, 87.

Time is not an essential element of the offense defined by this section, and it is not necessary to prove the commission of the offense within the time laid in the indictment (123-451, 143+1126, 49 L. R. A. [N. S.] 792). Disorderly House, ¶13.

Evidence held to support a conviction (127-505, 150+171). Criminal Law, ¶741(1).

8717. Houses of prostitution, etc., nuisances—

Nature of statute.—This act was intended by the legislature to be a civil and not a penal statute, as the criminal aspects of the act against which the statute is directed were already covered by existing statutes (126-95, 147+953).

This act is not penal with reference to forfeiture and sale of personal property used in maintaining the nuisance or with reference to any of the other penalties imposed (126-95, 147+953).

Who are liable.—Under this section owners of a leasehold estate, who sublet the premises to one who, with their knowledge, maintains a nuisance, are liable to the penalties imposed (135-465, 160+783). Nuisance, ¶82.

An owner of personal property covered by a contract of conditional sale executed prior to the enactment of this statute has no vested right to its use in violation of this act, though prior thereto such sale and use were not unlawful (126-78, 147+951, 52 L. R. A. [N. S.] 932, Ann. Cas. 1915D, 549). Constitutional Law, ¶92.

Constitutionality.—This act does not violate the constitutional guaranty of a jury trial merely because the act denounced constituted a crime at the time of the adoption of the constitution (126-95, 147+953). Jury, ¶10, 12(2).

This statute is not invalid as an unreasonable exercise of the police power with respect to personal property used in a disorderly house (126-78, 147+951, 52 L. R. A. [N. S.] 932, Ann. Cas. 1915D, 549). Nuisance, ¶60.

The act in its remedial details, as well as general purpose, is a proper exercise of the police power (126-95, 147+953). Nuisance, ¶60.

Other remedies.—Aside from this act, equity has power to abate the nuisance therein described (126-78, 147+951, 52 L. R. A. [N. S.] 932, Ann. Cas. 1915D, 549; 126-95, 147+953). Nuisance, ¶75.

8718. Same—Action to enjoin—Restraining order—Answer, etc.—

126-95, 147+953; note under § 8717.

The act does not contemplate determination of the rights of defendants to personal property used in the house on application for a temporary injunction (126-78, 147+951, 52 L. R. A. [N. S.] 932, Ann. Cas. 1915D, 549). Nuisance, ¶84.

8719. Same—Trial—Action by citizen, etc.—

126-95, 147+953; note under § 8717.

Constitutionality—Neither this section nor § 8721 authorize interference as to property rights without due process of law (126-78, 147+951, 52 L. R. A. [N. S.] 932, Ann. Cas. 1915D, 549). Constitutional Law, ¶311.

Notice to owner—An owner of property is chargeable with the knowledge of her agent that the leased premises are being used as a disorderly house (131-308, 155+90). Nuisance, ¶82.

Holding that the owner must have notice of the nuisance before he can be charged under the act does not render the statute inoperative (131-308, 155+90). Nuisance, ¶85.

Evidence—Testimony of a detective as to general reputation, based on conversations with taxi drivers, and of an officer who had not been in the vicinity of the house at a time material to the controversy, was improperly received, and its admission prejudicial (131-308, 155+90). Witnesses, ¶37(2).

The character of the premises may be shown by evidence as to how it is conducted. In an action to abate a nuisance denounced by this act, testimony of the general reputation of the premises is competent upon the question of their character and knowledge of it in defendants. Evidence that a hotel was openly and continuously used by streetwalkers for their purposes as occasion required was sufficient to show the maintenance of a nuisance under the statute (131-349, 154+1073). Nuisance, ¶84.

8720. Same—Contempts—

126-95, 147+953; note under § 8717.

8721. Same—Order of abatement—Personal property—Contempt—Fees—

126-78, 147+951, 52 L. R. A. [N. S.] 932, Ann. Cas. 1915D, 549; note under § 8719.

126-95, 147+953; note under § 8717.

A holding that the owner must have notice of the nuisance before he is chargeable under the act does not render the statute inoperative. The prohibition against the use of the building for a year affects only those owners who had knowledge of the maintenance of the nuisance (131-308, 155+90). Nuisance, ¶85.

The provision of this section, that claimants of personal property used in maintaining the house must prove innocence "to the satisfaction of the court," is not objectionable, in that it calls for more than a preponderance of the evidence (126-78, 147+951, 52 L. R. A. [N. S.] 932, Ann. Cas. 1915D, 549). Nuisance, ¶84.

A motion to vacate a default judgment in proceedings under this act is addressed to the trial court's discretion (131-488, 154+659). Judgment, ¶139.

8722. Same—Duty of county attorney, etc.—

126-95, 147+953; note under § 8717.

This section applies only to defendants convicted in inferior courts, and, if invalid, does not concern defendant property owners, appellants in a civil action alone; the word "now" being a misprint for "not" (126-78, 147+951, 52 L. R. A. [N. S.] 932, Ann. Cas. 1915D, 549). Statutes, ¶64(6).

8723. Same—Intervention by owner—

The provision of this section as to giving bond is not violative of the bill of rights, providing for the obtaining of justice freely and without purchase, or of the provision of the state and federal constitution as to due process of law (131-308, 155+90). Constitutional Law, ¶278(1), 324; Nuisance, ¶60.

This provision is unnecessarily drastic, but the other sections are not affected thereby, even if it be held invalid (126-95, 147+953). Statutes, ¶64(6).

Though a subtenant conducted an abatable nuisance, the tenant having acted in good faith, and the owner having had no knowledge of the improper use of the premises, injunction properly went against the tenant, with privilege of giving the bond provided for by this section (131-349, 154+1073). Novation, ¶84.

8724. Same—Permanent injunction—Penalty and lien—

The penalty affixed is not a tax within the meaning of Const. art. 4 § 10, providing that all bills for raising revenue shall originate in the house (131-308, 155+90). Statutes, ¶6.

Proceedings under this act, being equitable, do not require a jury trial, and the court, having properly assumed jurisdiction thereof, had power to grant full relief, incidental as well as primary (126-95, 147+953). Nuisance, ¶85.

8725. Same—Owners and agents—Parties to action—

126-95, 147+953; note under § 8717.

SABBATH BREAKING, ETC.

8752. Definitions—

126-257, 148+100; note under § 8753.

Cited (127-84, 148+891).

8753. Things prohibited—Exceptions—

Cited (127-84, 148+891).

Conducting a picture and vaudeville show on Sunday in such a way as not to seriously interrupt the repose and religious liberty of a community is not a violation of this section, and hence a contract for advertising space on the curtain of a theater so conducted, the contract contemplating its use on Sunday, is not void (126-257, 148+100). Sunday, ~~§~~6 (1), 11.

The execution of a contract on Sunday for such advertising space is not void under the conditions stated (126-257, 148+100). Sunday, ~~§~~13.

Public policy of the state, as evinced by this section, as affecting the review of an order of the railroad commission directing a railroad company to resume the operation of a Sunday local passenger train (see 130-57, 153+247). Railroads, ~~§~~9(1); Sunday, ~~§~~4.

8754. Punishment—

126-257, 148+100; note under § 8753.

CHAPTER 99

CRIMES AGAINST PUBLIC HEALTH AND SAFETY

8759. Public nuisance defined—

126-477, 148+466, 52 L. R. A. (N. S.) 999.

Cited (126-95, 147+953).

8760. Maintaining or permitting building as a nuisance—

Cited (126-95, 147+953).

8770. Dangerous weapons—Evidence—Every person who shall manufacture, or cause to be manufactured, sell, keep for sale, offer, or dispose of, any instrument or weapon of the kind usually known as a slung-shot, sand-club, or metal knuckles; or who shall attempt to use against another, or with intent so to use, shall carry, conceal, or possess, any of the weapons hereinbefore specified, or any dagger, dirk, knife, pistol, or other dangerous weapon, shall be guilty of a gross misdemeanor. The possession by any person, other than a public officer, of any such weapon concealed or furtively carried on the person shall be presumptive evidence of carrying, concealing, or possessing with intent to use the same. (Amended '17 c. 243 § 1)

[8770—]1. **Selling firearms and ammunition to minors—**No person, in any city in this state, shall sell, give, loan or in any wise furnish any firearm or ammunition to a minor under the age of eighteen years without the written consent of his parents or guardian, or of a police officer or magistrate of such city. ('17 c. 244 § 1)

[8770—]2. **Same—Penalty—**Any person who violates any provision of this act is guilty of a misdemeanor. ('17 c. 244 § 2)

8781. Guarding ice cutting—

Plaintiff, who owned a team and hired the team and driver to defendant to harvest ice at a fixed sum per day, was within this act, and was entitled to recover for loss of the horses by their stepping into an unguarded hole in the ice while plaintiff was driving them (125-168, 145+1073). Negligence, ~~§~~51.

SUPP.G.S.MINN.'17—51

CHAPTER 100

CRIMES AGAINST THE PUBLIC PEACE

8803. Aiming or discharging firearms, etc.—

Discharging firearm without justification to frighten another, though intending not to hit him, but which in fact does hit him, is an assault and battery under § 8633; the act being unlawful under this section (131-427, 155+399). Assault and Battery, *§* 57.

[8809—]1. **Foreign born residents not citizens, etc., forbidden to have firearms, etc.—Penalty—Hunting game animals and birds, when permitted—**That it shall be unlawful for any foreign born resident of this state who has not become a citizen of the United States, or who has not declared his intention, in accordance to law, of becoming a citizen of the United States, to hunt for or capture or kill in the state of Minnesota any wild bird or animal, either game or otherwise, of any description, except in lawful defense of person or property, and to that end it shall be unlawful for any such foreign born resident within this state to either own or be possessed of a shotgun or rifle, or other firearms of any make. Provided that any person who has not become a citizen of the United States, or who has not declared his intention, in accordance to law, of becoming a citizen of the United States, may hunt for or capture or kill game animals and game birds subject to the same laws and regulations as govern the taking of game animals or game birds in this state by non-residents.

Each and every person violating the provisions of this act shall be guilty of a misdemeanor and shall upon conviction thereof be punished by a fine of not less than twenty-five (\$25.00) dollars for each offense, or by imprisonment in the county jail for not less than thirty (30) days. ('17 c. 500 § 1)

By § 3 the act takes effect August 1, 1917.

See §§ [8521—]1 to [8521—]9.

[8809—]2. **Same—Contraband—**All guns, or game birds or animals, or other birds or animals, had in possession contrary to the provisions of this act are declared to be contraband and shall be seized by any game warden, or other officer, and shall be sold by the state game and fish commissioner as provided by law. ('17 c. 500 § 2)

CHAPTER 101

CRIMES AGAINST PROPERTY

8817. Officer interested in contract—

Accountability to city for secret profits in sale of land to city (122-301, 142+812, 48 L. R. A. [N. S.] 842, Ann. Cas. 1914D, 804). Municipal Corporations, *§* 255.

ARSON

8821. First degree—

The corpus delicti in arson requires proof, not alone of the fact that the building burned, but that the fire originated through criminal agency. In this case, held, that the evidence is insufficient to prove such corpus delicti (128-163, 150+787). Arson, *§* 37(1).

8822. Second degree—

Circumstantial evidence may be sufficient to convict and to establish the corpus delicti (132-225, 156+280). Arson, *§* 37(1).

Evidence held insufficient to support a conviction of burning a barn (130-347, 153+845). Arson, *§* 37(1).

8823. Third degree—

Evidence held to sustain a conviction of arson in the third degree (124-58, 144+410). Arson, *§* 37.

A charge as to the prerequisites necessary to justify a conviction upon circumstantial evidence held sufficiently favorable to defendant (124-58, 144+410). Criminal Law, *§* 782(9).

FORGERY

8834. First degree—
129-402, 152+769.

LARCENY

8870. What constitutes—

In a prosecution for grand larceny, based on the stealing of a pocketbook, evidence held sufficient to sustain a finding that defendant committed the larceny (162+893). Larceny, ~~§~~55.

In a prosecution for grand larceny, evidence held to sustain a finding that a pocketbook had been stolen (162+893). Larceny, ~~§~~56.

8874. Grand larceny in first degree—How punished—

Variance between indictment and proof, as to character of money stolen held not fatal (128-481, 151+186). Larceny, ~~§~~40(8).

Evidence held to sustain a conviction (128-481, 151+186). Larceny, ~~§~~55.

EXTORTION OR OPPRESSION

8894. Written and verbal threats—

An attempt consists of some specific intentional overt act tending directly, in the natural course of events, to the commission of the crime; and the mere act of soliciting another to commit the crime, or preparation therefor, is not, in the absence of some overt act looking to its actual commission, sufficient to justify conviction. The evidence in this case held insufficient to show an overt act (131-65, 154+737). Criminal Law, ~~§~~44, 45.

FALSE PERSONATION, ETC.

8901. False statements to obtain credit—

This act is not invalid because its title is broader and more comprehensive than the subject-matter of the act (135-89, 160+204). Statutes, ~~§~~118(2).

This act does not contravene Const. art. 4 § 33, as being class legislation, nor the fourteenth amendment of the federal constitution, though the act is aimed at those only who make or use false statements to obtain credit from banks, savings banks, and trust companies (135-89, 160+204). Constitutional Law, ~~§~~205(1), 208(1); Statutes, ~~§~~76(1).

8903. False statements in advertising—Any person, firm, corporation or association, who, with intent to sell or in any wise dispose of merchandise, securities, service, or anything offered by such person, firm, corporation or association, directly or indirectly, to the public, for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or any interest therein, makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, label, circular, pamphlet, or letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading, shall be guilty of a misdemeanor. ('13 c. 51, amended '15 c. 309 § 1)

1915 c. 309 is entitled "An act to amend Chapter 51, General Laws of 1913," etc., although it does not expressly amend the same.

[8903—]1. **Same—Dairy and food commission to enforce—Duty of county attorney—**The duty of a strict observance and enforcement of this law and prosecution for any violation thereof is hereby expressly imposed upon the Dairy and Food Commission of the State of Minnesota, and it shall be the duty of the county attorney of any county wherein a violation of this act shall have occurred, upon complaint being made to him, to prosecute any person violating any of the provisions of this act. ('15 c. 309 § 2)

8907. Selling or concealing mortgaged property—"Chattel mortgage" defined—Every person who, with intent to place mortgaged personal property beyond the reach of the mortgagee or his assigns, shall remove or conceal, or aid or abet in removing or concealing, any such property, and any mortgagor of such property who shall assent to or knowingly suffer such re-

removal or concealment, or, at any time before the debt secured by a chattel mortgage has been fully paid, shall sell, convey, or in any manner dispose of the personal property so mortgaged, or any part thereof, without the written consent of the mortgagee or his assigns, or without informing the person to whom he shall sell, convey, or dispose of the same that it is mortgaged, and the true amount then due on the debt secured by such mortgage, shall be punished by imprisonment in the state prison or county jail for not more than one year, or by fine of not more than five hundred dollars.

Chattel mortgage within the meaning of this act shall include every written instrument whether in form a chattel mortgage or contract of conditional sale, whereby the title of personal property therein described is mortgaged, held or reserved as security for a debt; mortgaged personal property shall include all personal property which is described in or covered by any such instrument; and the provisions and penalties of this act shall apply to all vendors and vendees of personal property, the title to which is so held or reserved, in the same manner and with the same force and effect as applicable to mortgagors and mortgagees. (Amended '17 c. 90 § 1)

FALSE WEIGHTS AND MEASURES

8913. Using false weights and measures—

124-307, 144-962.

Under an ordinance declaring that one knowingly selling commodities at short weight shall be fined, knowledge is an essential element of the offense, and where complaint did not charge that sale was by short weight to defendant's knowledge, and no evidence thereof was offered no violation was shown (162-451). *Weights and Measures*, ¶12.

MALICIOUS MISCHIEF—INJURIES TO PROPERTY

8932. Interfering with dam, etc.—

One who destroys a boom materially obstructing a navigable river is not liable to prosecution under this section (130-229, 153-532, Ann. Cas. 1916C, 267). *Malicious Mischief*, ¶1.

8934. Injury of property—

An indictment was not bad because it failed to charge that defendant acted "maliciously" (127-510, 150-209). *Malicious Mischief*, ¶4.

Evidence held to support a conviction (127-510, 150-209). *Malicious Mischief*, ¶9.

8951. Trespass on railway track—

Cited (131-281, 154-1088).

CHAPTER 102

CRUELTY TO ANIMALS

8956. Cruelty in transportation—

Evidence held to justify finding that defendant railroad company was negligent in the care of live stock unloaded in the course of transportation (123-495, 144-220). *Carriers*, ¶230(4).

CHAPTER 103

MISCELLANEOUS CRIMES

[8965—]1. **Sale of certain narcotics prohibited—Exceptions**—On or after the 31st day of December, 1915, it shall be unlawful for any person to possess or sell or otherwise dispose of any opium or preparation or manufacture thereof; any morphine or salt or ester or other derivative thereof; any heroin or salt or ester thereof; any coca leaves except decocanized coca leaves; any preparation or manufacture of coca leaves except decocanized preparations or manufactures; any cocaine or salt or ester or other derivative thereof; any alpha—or beta—eucaine or salt or ester thereof; or any chloral or any salt, or ester thereof; or any synthetic substitute for any of the aforementioned substances. Provided that nothing contained in this section shall apply:

(a) To the possession of any of the aforementioned substances by legally licensed physicians or surgeons in connection with the practice of medicine or surgery, by legally licensed dentists in connection with the practice of dental medicine or surgery, by legally licensed veterinarians in connection with the practice of veterinary medicine or surgery, by legally licensed pharmacists or druggists in connection with the practice of pharmacy, by hospitals or similar institutions, when intended exclusively for the treatment of patients in said institutions, by manufacturers of any of the aforementioned substances, by wholesale dealers in any of the aforementioned substances, or by colleges, scientific or public institutions when intended exclusively for educational, scientific or public purposes.

(b) To the possession by common carriers of original packages of any of the aforementioned substances consigned to any of the persons enumerated in paragraph (a) of this section.

(c) To the possession by duly authorized officers of the law of any of the aforementioned substances seized in the performance of their official duties.

(d) To the possession by any person of any of the aforementioned substances which have been dispensed by a legally licensed physician, surgeon, dentist, veterinarian, pharmacist or druggist in compliance with this act, and are possessed in the form in which they are dispensed and in a container which is labeled in conformity with this act.

(e) To the possession by consumers, by common carriers or by retail dealers licensed by the board of pharmacy of bona fide medicinal preparations intended for internal use, which do not contain in one fluid ounce, or if a solid or a semi-solid preparation, in one avoirdupois ounce, separately more than two grains of opium or the extractive of two grains thereof, or more than one-fourth grains of morphine or any salt thereof, or more than one-eighth grain of heroin or any salt thereof, or more than one grain of codeine or any salt thereof, or 120 grains of chloral or any salt or ester thereof, or of any bona fide medicinal preparation suitable for external use only which does not contain cocaine or any salt or derivative thereof or any synthetic substitute therefor, or alpha—or beta—eucaine or any salt or derivative thereof or any synthetic substitute therefor, or heroin or any salt or derivative thereof.

(f) To the sale or other disposal of the aforementioned substances by manufacturers, wholesale dealers, legally licensed pharmacists or druggists to manufacturers, wholesale dealers, hospitals or similar institutions, colleges, scientific or public institutions, or legally licensed physicians, dentists, veterinarians, pharmacists or druggists; provided that a record of such sale or disposal, showing the date of the transaction, the names and addresses of the parties thereto, the name and quantity of the substance transferred, be made and kept on file by both parties to the transaction for two years open to inspection by duly authorized officers of the law; provided that the making and preserving of any order and duplicate, or of any record required by any other law of this state or of the United States, which order, duplicate or rec-

ord shall set forth the facts above required to be stated, shall be deemed a satisfactory compliance with the provisions of this paragraph. Whenever required to do so by the authorities charged with the duty of enforcing this act any person selling or distributing the aforementioned substances shall render to such authorities requesting it a true and correct statement verified by affidavit setting out the quantity of such drugs received by him during a period immediately preceding the request, not exceeding three months, as the authorities may demand, the names of the persons from whom the said drugs were received, the quantity in each instance received from each of such persons, and the date when received.

(g) To the sale or other disposal to a consumer of any of the aforementioned substances by a legally licensed pharmacist or druggist pursuant to the written prescription of a legally licensed physician, surgeon, or dentist, provided that said prescription is dated as of the day on which it was signed by the prescriber, bears the signature and address of the prescriber and the name of the person for whose use the said substance is intended; and provided that the said prescription be serially numbered and dated and filed in its appropriate place in the prescription file of the compounder and be retained on file for two years open to inspection by any duly authorized officer of the law; and provided further that, with the exception of any prescription for a preparation which, if for internal use, does not contain in one fluid ounce, if a solid or semi-solid preparation, in one avoirdupois ounce separately more than two grains of opium or the extractive of two grains thereof, or more than one-fourth grain of morphine or any salt thereof, or more than one-eighth grain of heroin or any salt thereof, or more than one grain of codeine or any salt thereof, or 120 grains of chloral or any salt or ester thereof, or, if for external use, does not contain cocaine or any salt derivative thereof, or any synthetic substitute therefor, or alpha—or beta—eucaine, or any salt or derivative thereof or any synthetic substitute therefor, or heroin or any salt or derivative thereof; such prescription shall be filled but once and no copy of such prescription shall be given to any person except to a duly authorized officer of the law for use in connection with the enforcement of this act or laws of the United States; and provided further that the medicine dispensed upon such prescription shall be delivered in a container which is labeled with the serial number of the prescription, the date upon which it is filled, the name of the person for whose use the medicine is intended, the name of the prescriber, and the name and address of the dispenser.

(h) To the sale or other disposal of any of the aforementioned substances by a legally licensed pharmacist or druggist to a person authorized in writing by the prescriber to receive such substance on the written prescription of a legally licensed veterinarian; provided that such prescription is dated as of the day on which it was signed by the prescriber, bears the signature and address of the prescriber, the name of the person authorized to receive the medicine, and the kind of animal for whose use the said substance is intended; and provided that such prescription be identified, filed and preserved in the manner provided in the preceding paragraph; and provided further that with the exception of any prescription for a preparation for external use, which does not contain any cocaine or any salt or derivative thereof or any synthetic substitute therefor, or any alpha—or beta—eucaine or any salt or derivative thereof or any synthetic substitute therefor, or any heroin or any salt or derivative thereof, such prescription shall be filled but once and no copy of such prescription shall be given to any person except to a duly authorized officer of the law for use in connection with the enforcement of this act or the laws of the United States; and provided further that the medicine dispensed upon such prescription shall be delivered in a container which is labeled with the serial number of the prescription, the date upon which it is filled, the name of the person authorized by the prescriber to receive the medicine, the kind of animal for whose use the medicine is intended, the name of the prescriber, and the name and address of the dispenser.

(i) To the administration, sale or other disposal of any of the aforementioned substances by a legally licensed physician or dentist for or to a

patient upon whom he is in professional attendance; provided that said physician or dentist shall keep a record of the name and address of the patient, the date of the sale or other disposal, and the amount of the drug transferred; provided that the making and preserving of any record required by any other law of this state or of the United States, which record shall set forth the facts above required to be stated, shall be deemed satisfactory compliance with the provisions of this paragraph; and provided further that any of the aforementioned substances dispensed for the use of a patient by a legally licensed physician or dentist shall be delivered in a container labeled with the name of the patient, the date of the delivery, and the name and address of the dispenser.

(j) To the administration of any of the aforementioned substances to a lower animal and not to a human being by a legally licensed veterinarian, or to the prescribing, sale, or other disposal of the aforementioned substances for administration to a lower animal and not to a human being, by a legally licensed veterinarian; provided that said veterinarian when selling or delivering any of the aforementioned substances shall keep a record of the name and address of the person to whom he delivers any of the aforementioned substances, the kind of animal for whose use the aforementioned substances are delivered, the date of the delivery and the amount of the drug transferred in such instances as he may deliver of any of the aforementioned substances more than two full adult medicinal doses for the kind of animal specified, and provided further that any of the aforementioned substances delivered by a legally licensed veterinarian shall be delivered in a container labeled with the name of the person to whom the delivery is made, the kind of animal for whose use the medicine is intended, the date of the delivery, and the name and address of the dispenser.

(k) To the sale by manufacturers, wholesale dealers, legally licensed pharmacists, druggists, physicians, surgeons, dentists or veterinarians or by retail dealers licensed by the board of pharmacy to sell bona fide medicinal preparations intended for internal use, which do not contain in one fluid ounce, or if a solid or semi-solid preparation, in one avoirdupois ounce, separately more than two grains of opium or the extractive of two grains thereof, or more than one-fourth grain of morphine or any salt thereof, or more than one-eighth grain of heroin or any salt thereof, or more than one grain codeine of [or] any salt thereof, or 120 grains of chloral or salt or ester thereof, or of any bona fide medicinal preparation suitable for external use only, which does not contain cocaine or any salt or derivative thereof or any synthetic substitute therefor, or alpha—or beta—eucaine or any salt or derivative thereof or any synthetic substitute therefor, or heroin or any salt or derivative thereof. ('15 c. 260 § 1)

Section 6 repeals inconsistent acts, etc.

By § 7 the act takes effect December 31, 1915.

[8965—]2. **Same—Physicians and dentists forbidden to prescribe for habitual users, etc.**—It shall be unlawful for any physician or dentist to furnish to or prescribe for the use of any habitual user of the same any of the substances enumerated in Section 1 of this act [8965—1]; provided that the provisions of this section shall not be construed to prevent any legally licensed physician from prescribing in good faith for the use of any patient under his care for the treatment of a drug habit such substances as he may deem necessary for such treatment; provided that such prescriptions are given in good faith for the treatment of such habit. ('15 c. 260 § 2)

[8965—]3. **Same—Penalty**—Any person who violates the foregoing provisions of this act shall be deemed guilty of a felony and for each violation thereof shall be punished on conviction thereof, by imprisonment in the penitentiary for not less than one year nor more than five years, or by a fine of not less than \$100.00 nor more than \$1,000.00, or both imprisonment and fine in the discretion of the court; provided, however, that a legally licensed pharmacist or druggist shall not be held liable for the innocent compounding and dispensing of any of the articles enumerated in Section 1 of this act [8965—1], in consequence of a false, fraudulent or forged prescription which

he in good faith believed to be a prescription of a licensed physician, licensed dentist or licensed veterinarian issued for a lawful purpose. ('15 c. 260 § 3)

[8965—]4. **Same—Licenses revoked on second conviction**—Whenever any legally licensed physician, surgeon, dentist, veterinarian, pharmacist, druggist, manufacturer, wholesale or retail dealer or institution, shall have been twice convicted in a court of proper jurisdiction of any felony under this act, the officer or board, having power to issue licenses to any such licensed person, may, after giving such licensee reasonable notice and opportunity to be heard, revoke the license of said licensee. ('15 c. 260 § 4)

[8965—]5. **Same—"Person" defined**—The word "person" as used in this act shall be construed to mean and include a partnership, association, company or corporation, as well as a natural person. ('15 c. 260 § 5)

8969. **Frauds on innkeepers, etc.—**

Cited (135-89, 160+204).

8971. **Advertisement soliciting divorce business—**

This section is not invalid as depriving attorneys or others of a vested right (123-227, 143+780). Constitutional Law, ¶92.

An advertisement by an attorney, "Law Specialties, divorce and corporation matters; confidential advice; free booklet on organization and promotion of corporations; references," was a violation of this section (123-227, 143+780). Attorney and Client, ¶33.

Violation of this statute by an attorney, being a misdemeanor involving moral turpitude, is ground for suspension from practice (123-529, 143+1135). Attorney and Client, ¶39.

8973. **Trusts and combinations—**

123-17, 142+930, L. R. A. 1915B, 1179, 1195.

Monopolies—The violation of the statute by the formation of a combination is not excused by facts tending to justify the act, and which would have been proper and legal had the members acted independently. The combination of several persons and corporations, all independent dealers in the milk and cream business, to raise the price thereof is a violation of the statute, though the increased price was necessary to afford them a profit (124-34, 144+417, 51 L. R. A. [N. S.] 244). Monopolies, ¶17(1).

For the violation of this and the following section for entering into a combination to raise the price of commodities, a domestic corporation is not subject to the penalty imposed by this section, but only to the forfeiture prescribed by § 8974. The original statute, 1899 c. 359, imposed both fine and forfeiture of charter, but the revision of 1905 changed the statute in this respect, thereby making the penalty of forfeiture of the charter the exclusive punishment as to domestic corporations (124-34, 144+417, 51 L. R. A. [N. S.] 244). Monopolies, ¶26(1).

An indictment under this section, charging that defendants, several concerns and corporations, "were jointly and severally" engaged in a certain occupation, and in violation of the statute formed a combination for increasing the price of their products, held to charge that defendants were to some extent independent dealers, and not jointly associated in business as one concern. Evidence held to support a conviction under this section (124-34, 144+417, 51 L. R. A. [N. S.] 244). Monopolies, ¶31.

Contracts in restraint of trade—An advertising contract to prepare and furnish premium catalogues in which certain articles should be listed, merely tending to prevent plaintiff from furnishing such catalogues and merchandise to certain parties in defendant's locality, was not in restraint of trade (162+887). Contracts, ¶117(2).

A covenant in a bill of sale of a transfer business not to engage in the same business in a certain city held not in restraint of trade (124-49, 144+415). Contracts, ¶117(5).

Acquiescence as barring right to appeal—After defendant, a foreign corporation, changed its plea of not guilty to violation of this section, and entered a plea of guilty, and paid the fine imposed without protest as to the amount, it could not appeal from the judgment of conviction (127-252, 149+286, Ann. Cas. 1916C, 618). Criminal Law, ¶1131(4).

8974. **Domestic corporations to forfeit franchises—Foreign corporations—**

The revision of this and the preceding section in 1905 changed the pre-existing statute, so as to make a penalty of forfeiture of the charter the exclusive punishment as to domestic corporations. A domestic corporation is not subject to the penalty imposed by § 8973, but only to the forfeiture of its charter as prescribed by this section (124-34, 144+417, 51 L. R. A. [N. S.] 244). Monopolies, ¶26(1).

8988. **Milk, etc.—Discrimination between different localities prohibited—Evidence**—Any person, firm, co-partnership or corporation engaged in the business of buying milk, cream or butterfat for the purpose of manufacture who shall, with the intention of creating a monopoly or destroying the business of a competitor, discriminate between different sections, localities, communities or cities of this state by purchasing such commodity at a higher price or rate in one locality than is paid for the same commodity by said

person, firm, co-partnership or corporation in another locality after making due allowance for the difference, if any, in the actual cost of transportation from the locality of purchase to the locality of manufacture shall be deemed guilty of unfair discrimination and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars (\$500), or by imprisonment in the county jail not to exceed six months.

Proof that any person, firm, co-partnership or corporation has paid a higher price for milk or cream in one locality than in another, after due allowance for the cost of transportation has been made, shall be prima facie evidence of violation of this act. ('13 c. 230 § 1, amended '17 c. 337 § 1)

[8989—]1. **Monopolization of food products declared criminal conspiracy**—Any combination of persons, either as individuals, or as members or officials of any corporation to monopolize the markets for food products in this state or to interfere with or restrict the freedom of such markets, is hereby declared to be a criminal conspiracy. ('17 c. 381 § 1)

[8989—]2. **Same—Penalty**—Any person found guilty of violating this act shall be punished by a fine of not less than fifty dollars nor more than \$100, or imprisonment in the county jail for a period not to exceed ninety days. ('17 c. 381 § 2)

9010. Boarding moving engines or cars—

Cited (135-89, 160+204).

A person entering a train to assist an outgoing passenger to alight, and who attempts to leave the train while it is in motion, is not within the inhibition of this section (124-517, 145+746). Carriers, ~~c.~~ 333(5).

[9014—]1. **Rendition of "The Star Spangled Banner" when prohibited**—The playing, singing or rendering of the hymn commonly known and designated as The Star-Spangled Banner, in any public place or at any public entertainment, or in any theatre or motion picture hall, restaurant or café in the State of Minnesota, except as an entire and separate composition or number, without embellishments of national or other melodies, and the singing or playing of said hymn or any part thereof as a part or selection of a medley of any kind, and the playing of said hymn at or in any of the places mentioned, for dancing or as an exit march, is hereby prohibited. ('17 c. 247 § 1)

[9014—]2. **Owner of theatre, etc., forbidden to permit**—No owner, proprietor or manager of any theatre, moving picture hall, restaurant, café or other place within the State of Minnesota, where the public gathers, shall submit or allow anyone playing, singing or performing therein, to play, sing or render the said hymn in violation of the provisions of this act. ('17 c. 247 § 2)

[9014—]3. **Same—Penalty**—Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor. ('17 c. 247 § 3)

9019. Protection to motormen—

Cited (135-89, 160+204).

9020. Stealing railway tickets, etc.—

Cited (135-89, 160+204).

9021. Employee obtaining transportation with intent to defraud—

Cited (135-89, 160+204).

9025. Stealing from cars—

Cited (135-89, 160+204).

9030. "Vagrants" defined—How punished—The following persons are vagrants:

1. A person who, being an habitual drunkard, abandons, neglects or refuses to aid in the support of his family.

2. A person who has contracted an infectious or other disease in the practice of drunkenness or debauchery, requiring charitable aid to restore him to health.

3. Every male person who lives wholly or in part on the earnings of prostitution, or who in any public place solicits for immoral purposes. A male person who lives with or is habitually in the company of a prostitute

- and has no visible means of support, shall be deemed to be living on the earnings of prostitution.

4. A common prostitute who shall be found wandering about the streets, or loitering in or about any restaurant, lodging house, saloon, or place where intoxicating liquors are sold.

5. Every female who shall be found wandering about the streets and addressing male persons for the purpose of soliciting the commission of any lewd, indecent or unlawful act, or for the purpose of enticing any male person into a house of prostitution or assignation, bedhouse, room, or other place for any unlawful purpose.

6. Fortune tellers, and such other like imposters.

7. A person known to be a pickpocket, thief, burglar, "yeggman" or "confidence man," and having no visible or lawful means of support, when found loitering around any steamboat landing, railroad depot, railroad yard, banking institution, broker's office, place of public amusement, hotel, auction room, store, shop or crowded thoroughfare, car or omnibus, or at any public gathering or assembly. Provided, however, that this act shall not apply to any such person unless he has been convicted of the offense which would make him known as such person, and shall not apply to any person who has been in prison for such offense, who, after being released from such imprisonment has been engaged in lawful employment, and shall not in any case apply to any such person until more than thirty days have elapsed since being released from such imprisonment.

8. A person engaged in practicing or attempting any trick or device to procure money or other thing of value, if such trick or device is made a public offense by any law of this state, or any person engaged in soliciting, procuring or attempting to solicit or procure money or other thing of value by falsely pretending and representing himself to be blind, deaf, dumb, without arms or legs, or to be otherwise physically deficient or to be suffering from any physical defect or infirmity.

9. A person wandering about and lodging in taverns, groceries, ale-houses, outhouses, market places, sheds, stables, barns or other uninhabited buildings or in the open air and not giving a good account of himself.

10. Any person not blind, over sixteen years of age and who has not resided in the county in which he may be at any time for a period of six months prior thereto, and not having visible means to maintain himself, lives without employment or wanders about and begs, or goes from door to door or places himself in the streets, highways or public passages to beg or receive alms.

Every such person shall upon conviction thereof be punished by imprisonment not exceeding ninety (90) days or by a fine not exceeding one hundred dollars (\$100.00). (Amended '17 c. 292 § 1)

[9032—]1. **Itinerant persons forbidden to place animals or to camp on highways, when**—It shall be unlawful for any itinerant person or persons to hitch or turn loose on any public highway in this state any horses, cattle or other animals for the purpose of feeding the same or for the purpose of temporarily camping on such public highway for a period to exceed twelve hours and within six miles of the previous camping place of said person or persons. ('15 c. 279 § 1)

[9032—]2. **Same—Penalty for violation**—Any resident in this state may enter complaint before any court having jurisdiction against any person or persons violating this section and it shall be the duty of such court to issue a warrant for the arrest of such person or persons complained of, and have them brought forthwith before said court for examination, and if found guilty of such violation as charged, said person or persons shall be punished by a fine not exceeding fifty (\$50.00) dollars or by imprisonment in the county jail for not more than thirty days. ('15 c. 279 § 2)

CHAPTER 104

CRIMINAL PROCEDURE

SEARCH WARRANTS

9035. To whom directed—Contents—

A description of the place to be searched meets the requirements, where it furnishes data from which the officer is enabled to definitely locate the place. The description in this case held sufficient (132-260, 156+130). Searches and Seizures, ¶3.

EXTRADITION

9038. Warrant of extradition, service, etc.—

To overcome the effect to be given the governor's warrant, the evidence must clearly and satisfactorily demonstrate that the person therein named was not in the demanding state at or about the time the crime was committed (135-320, 160+858). Extradition, ¶39.

In habeas corpus proceedings, the burden of proving that he is not a fugitive from justice is upon the prisoner; the warrant being prima facie evidence against him (128-38, 147+708). Habeas Corpus, ¶85(2).

ARRESTS

9066. Without warrant, when—Break door, etc., when—

131-71, 154+662, L. R. A. 1916C, 228.
Cited (134-58, 158+721).

EXAMINATION OF OFFENDERS—COMMITMENT—BAIL

9072. Process, by whom issued—

The determination of a committing magistrate will not be disturbed on habeas corpus, where the record discloses evidence reasonably tending to support it (124-456, 145+167). Habeas Corpus, ¶102.

9088. Certifying testimony—

Proceedings by an examining magistrate are required to be certified to and filed in the district court, and thereafter the prosecution is pending in that court (123-392, 143+971). Criminal Law, ¶244.

GRAND JURIES

9100. Exemptions—Disqualifications—In addition to the persons otherwise exempted therefrom by law, the following persons shall be exempt from service as grand jurors: United States officers, judges of courts of record, commissioners of public buildings, the state auditor, treasurer, and librarian, all county and city officers, including members of school boards in cities of the first class, constables, attorneys at law, ministers of the gospel, preceptors and teachers of high and graded schools and academies, one teacher in each common school, practicing physicians and surgeons, duly licensed embalmers, one miller to each grist mill, one ferryman to each licensed ferry, all acting telegraph operators, all members of fire companies organized according to law, all engineers actively engaged as locomotive or stationary engineers, all persons more than sixty years of age, all persons not of sound mind or discretion, and all persons subject to any bodily infirmity amounting to disability. All persons unable to speak and understand the English language, all persons whose names have been placed on any jury list at the request or suggestion, direct or indirect, of any person other than the officer charged with preparing such list, and all persons who shall have been convicted of any infamous crime, shall be disqualified from serving as grand jurors. (Amended '15 c. 15 § 1)

INDICTMENTS

9134. Contents—

Technical form is not important (121-381, 141+526). Indictment and Information, ¶75(1).

Verbal inaccuracies not ground of demurrer (121-381, 141+526). Indictment and Information, ¶79.

Matters of description or inducement need not be stated with the same particularity in an indictment as the facts constituting the essential elements of the crime are required to be stated (124-34, 144+417, 50 L. R. A. [N. S.] 244). Indictment and Information, ¶90.

Repugnant allegations in an indictment, which negative each other, do not vitiate the indictment, if neither of the repugnant allegations is necessary (126-396, 148+283). Homicide, ¶128.

It is proper to charge acts constituting manslaughter in the second degree in the conjunctive (126-396, 148+283). Homicide, ¶309(1).

9135. Form—

Technical form not required (121-381, 141+526). Indictment and Information, ¶75(1).

9138. Different counts—

An allegation in an indictment for manslaughter in the second degree of acts which constitute a more grave degree of homicide do not vitiate the indictment under this section (126-396, 148+283). Homicide, ¶139.

9139. Time, how stated—

Time not being an essential element in the offense of keeping a disorderly house (§ 8712), it is not necessary to prove the commission of the offense within the time laid in the indictment (123-451, 143+1126, 49 L. R. A. [N. S.] 792). Disorderly House, ¶13.

9140. Erroneous allegation as to person injured—

Idem sonans (see 129-409, 152+775).

9141. Words of statute need not be followed—

127-510, 150+209; 131-427, 155+399.

9142. Tests of sufficiency—

127-510, 150+209; 131-427, 155+399.

The indictment need not show that a prosecution was commenced on complaint of the husband or wife, nor that it was commenced within one year from the date of the offense (123-392, 143+971). Adultery, ¶7.

9143. Formal defects disregarded—

Technical form is not important (121-381, 141+526). Indictment and Information, ¶75(1).

Variance as to names; idem sonans (see 129-409, 152+775).

Repugnant allegations in an indictment, which negative each other, do not vitiate the indictment, if neither of the repugnant allegations is necessary (126-396, 148+283). Homicide, ¶128.

Error of the court in indulging in argument on the facts in its charge to the jury is not rendered harmless by this section (122-479, 142+801). Criminal Law, ¶922(5).

9150. Limitations—

The indictment may be returned at any time within three years from the commission of the offense (123-392, 143+971). Criminal Law, ¶147.

9157. Larceny by clerks, agents, etc.—Evidence—

Pleading and proof as to agency (see 130-10, 153+123).

DEMURRERS

9185. Grounds of demurrer—

Verbal inaccuracies not ground for demurrer (121-381, 141+526). Indictment and Information, ¶79.

CHANGE OF VENUE

9196. Place of trial—Change of venue—

Where evidence was conflicting as to whether alleged offense was committed within county named in indictment, it was not error for court to refuse to read to jury statute fixing boundary line of that county (162+465). Criminal Law, ¶772(4).

ISSUES AND MODE OF TRIAL

9200. Issue of fact—How tried—Appearance in person—

Defendant, who had not challenged either of two jurors, and who did not object on account of his absence to the judge's inquiry in chambers if they had been tampered with, could not complain of such action (162+465). Criminal Law, ¶660.

9204. Juror may testify, when—View—

Admissibility of testimony of jurors as to information gained on a view in a former trial, the verdict in which was set aside for misconduct of the jury in conducting experiments without authority (127-510, 150+209). Witnesses, ¶78.

9205. Questions of law and fact, how decided—

A request to charge that a witness was an accomplice as a matter of law held properly refused (135-159, 160+677). Criminal Law, ¶780(1).

The construction of a writing, such as an advertisement alleged to violate § 8971, is for the court, when the intention of the writer is to be gathered wholly from the writing itself (123-227, 143+780). Attorney and Client, ¶33.

Argumentative instructions condemned (122-479, 142+801). Criminal Law, ¶807(1).

9207. Charge of court—

Necessity to request instructions—Necessity of requests for instructions (122-91, 141+1113). Criminal Law, ¶824(1), 825(1).

Failure to request instructions, or to object to the charge as given, precludes review (122-493, 142+823). Criminal Law, ¶1038(1, 3).

When the court reviews the evidence, defendant is entitled to a charge that the jury are the exclusive judges of all questions of fact; but a failure to so charge, no request being made, will not result in a reversal (130-84, 153+271). Criminal Law, ¶782(3), 824(14).

In a joint trial, where evidence given voluntarily by one of the defendants is offered in evidence against such defendant, an instruction that such evidence was to be considered solely against the defendant who gave the testimony should have been given; but it was not error to fail to so instruct, in absence of a request for such a charge (127-445, 149+945). Criminal Law, ¶824(11).

Where the statutory definition of an offense is given to the jury, if defendant desires a more specific statement as to the elements of the offense he should make a request therefor (124-58, 144+410). Criminal Law, ¶825(2).

In a prosecution for resisting an officer, under § 8538, it was not error to fail to charge on assault in the third degree, in absence of a request for an instruction thereon (135-211, 160+666). Criminal Law, ¶824(3).

Argument in charge—It is not the province of the court to indulge in argument in its charge (122-479, 142+801). Criminal Law, ¶807(1).

Reviewing evidence in charge—The trial judge in criminal cases may review the evidence in his instructions, and may state to the jury that it tends to prove certain facts. The only restriction upon the right is that the review should be fair and impersonal, and not in a manner naturally to confuse the jury, or to lead them to a particular result (124-34, 144+417, 51 L. R. A. [N. S.] 244). Criminal Law, ¶763, 764(5).

9208. Jury—How kept while deliberating—

The separation of jurors is presumptively prejudicial, unless it clearly appears that no prejudice has resulted, and though the law cannot regard trifling and technical irregularities (124-515, 145+385). Criminal Law, ¶927(2).

9213. Verdict for lesser offence—

Cited (128-396, 148+283).

CALENDAR

9223. Register—

Cited (123-392, 143+971).

CHALLENGING JURORS

9224. Challenge defined—Kinds—Defendants to join—

134-309, 159+789.

9225. Challenge to panel—

An objection that the two judges of the municipal court of St. Paul had no power, without the participation of the "president of the common council," an officer no longer existing, to select a jury list, was in the nature of a challenge to the panel (134-309, 159+789).

Prejudice of individual jurors is not ground for challenge to the panel (124-162, 144+752, Ann. Cas. 1915B, 377). Jury, ¶116.

9226. Exception to challenge—

134-309, 159+789.

9227. Denial of challenge—Proceedings—

134-309, 159+789.

The action of the trial court on challenge to the panel, based on questions of fact, held sustained by the record on appeal (124-162, 144+752, Ann. Cas. 1915B, 377). Jury, ☞ 70(1), 75(2).

9228. Challenge to individual juror—

Act of trial judge, during a recess and in the presence of counsel for defendant and state, though in defendant's absence, in calling two jurors, neither of whom had been challenged, into his chambers separately and inquiring if either had been tampered with, was not prejudicial to defendant's rights (162+465). Criminal Law, ☞655(9).

9232. Particular causes of challenge—

In a civil case, the finding of the trial court that a proposed juror was not subject to challenge for actual bias held final (130-3, 153+250). Appeal and Error, ☞968.

9233. Causes of challenge for implied bias—

It is not a good cause of challenge that a proposed juror is in the employ of a corporation, the majority of the stock of which is controlled by another corporation, and so on down to a final holding corporation, which holding corporation in the same way controls the majority of the stock of the defendant corporation; such holding corporation not owning stock in either, and neither owning stock in the other (130-3, 153+250). Jury, ☞92.

APPEALS AND WRITS OF ERROR**9242. Removal to supreme court—**

Where a defendant, after a plea of not guilty, procured the court to hold a special term of court, and at such term entered a plea of guilty, and paid the fine imposed, without objection, defendant lost his right of appeal from the judgment so entered (127-252, 149+286, Ann. Cas. 1916C, 618). Criminal Law, ☞1131(4).

Where the court refuses to grant a stay of proceedings, to enable defendant to appeal, until the fine imposed is paid, the payment of the fine is not a voluntary payment, precluding appeal (125-332, 147+109). Criminal Law, ☞1026.

9245. Return—

The verity of a proper authenticated return cannot be attacked on appeal (124-58, 144+410). Criminal Law, ☞1111(3).

9246. Bill of exceptions—

In general—Necessity of exception at trial (122-91, 141+1113). Criminal Law, ☞1166½.

Necessity for objections, request for instructions, or presentation of questions in motion for new trial (see 133-184, 158+48). Criminal Law, ☞841, 1064(7).

Newly discovered evidence—The granting of a new trial for newly discovered evidence rests in the sound discretion of the trial court (134-384, 159+829). Criminal Law, ☞938(1).

No abuse of discretion in denying a new trial on the ground of newly discovered evidence is found, where such evidence is unsatisfactory, and merely corroborative and cumulative of positive and certain testimony of several witnesses on the same matter (126-402, 148+280). Criminal Law, ☞938(1).

In a prosecution for robbery, held, that there was no abuse of discretion in denying a new trial on the ground of newly discovered evidence (128-40, 150+168). Criminal Law, ☞938(2).

Misconduct of jury—The act of a juror in reading newspaper comments of the trial held not ground for new trial (122-493, 142+823). Criminal Law, ☞925½(4).

A temporary separation of a juror from the others, after a case has been submitted to them, is not ground for a new trial, when the circumstances exclude the suspicion or presumption that the juror has been tampered with (124-515, 145+385). Criminal Law, ☞927(2).

Misconduct of court or prosecuting attorney—Misconduct of county attorney and remarks of court at trial held not ground for new trial (128-187, 150+793, Ann. Cas. 1915D, 360). Criminal Law, ☞655(3), 706.

Failure of the county attorney to call a witness present at the killing, and statement by such attorney that he had examined the witness and did not care to use him, held not such misconduct as to require a new trial (123-487, 144+216). Criminal Law, ☞721½(1).

Conviction against the evidence and contrary to law—A conviction of assault in the second degree held not against the evidence nor contrary to law (126-402, 148+280). Criminal Law, ☞938(1).

9247. Proceedings in supreme court—

130-53, 152+1103.

Where the record contains none of the evidence or proceedings at the trial, they are presumed to be sufficient to sustain the conviction (123-392, 143+971). Criminal Law, ☞1144(16).

The rule that new trials in criminal cases should not be granted, unless the substantial rights of the accused have been violated, applied (135-159, 160+677). Criminal Law, ☞913(1).

Misconduct of county attorney in argument does not require a new trial, where defendant was not prejudiced thereby (123-128, 143+119). Criminal Law, ☞1037(1).

Where the appellate court entertains grave doubt of defendant's guilt, a new trial will be awarded, though the trial was free from technical error (130-347, 153+845). Criminal Law, ¶1159(1).

Error in instructions requires reversal, where evidence of guilt not conclusive (121-405, 141+483). Criminal Law, ¶1163(4).

Newly discovered evidence as ground for new trial (see 129-402, 152+769).

9251. Certifying proceedings—Stay—

This section does not authorize the certifying of questions which have arisen upon a trial in which the jury disagreed (124-532, 144+474). Criminal Law, ¶1010.

INDETERMINATE SENTENCES AND PAROLES

9267. Indeterminate sentence in certain cases—Whenever any person is convicted of any felony or crime committed after the passage of this act, punishable by imprisonment in the state prison or state reformatory, except treason or murder in the first or second degree as defined by law, the court in imposing sentence shall not fix a definite term of imprisonment, but may fix in said sentence the maximum term of such imprisonment, and shall sentence every such person to the state reformatory or to the state prison, as the case may require, and the person sentenced shall be subject to release on parole and to final discharge by the board of parole as hereinafter provided, but imprisonment under such sentence shall not exceed the maximum term fixed by law or by the court, if the court has fixed the maximum term, provided that if a person be sentenced for two or more such separate offenses sentence shall be pronounced for each offense, and imprisonment thereunder may equal, but shall not exceed the total of the maximum terms, fixed by law or by the court if the court has fixed the maximum term for such separate offenses, which total shall, for the purpose of this act, be construed as one continuous term of imprisonment. And provided further that where one is convicted of a felony or crime that is punishable by imprisonment in the state prison or state reformatory or by fine or imprisonment in the county jail, or both, the court may impose the lighter sentence if it shall so elect. (Amended '17 c. 319 § 1)

Section 2 repeals § 9268.

9268. [Repealed.]

See note under § [9267—]1.

9276. Persons convicted for prior offenses subject to parole—All persons convicted and sentenced to imprisonment in the state prison or in the reformatory prior to the year 1912 shall have the same right of parole and discharge as those convicted since that year, and all the powers, duties and functions conferred by law upon and exercised by the board of parole with reference to the custody and control of any person convicted of a crime committed subsequent to April 20, 1911, and paroled under the provisions of chapter 298, Laws 1911 [9267-9280], and the acts amendatory thereof, shall extend to and be applicable to any such person when paroled. (Amended '17 c. 262 § 1)

BOARD OF PARDONS

9288. Issuance of process—Witnesses—Standing appropriation—

Cited (131-116, 154+750).

CHAPTER 105

STATE PRISON AND STATE REFORMATORY

STATE PRISON

[9289—]1. **Old prison at Stillwater discontinued**—That the board of control and the warden of said state prison are hereby authorized and directed to abandon and discontinue said old prison in the city of Stillwater as a state prison and to transfer all prisoners imprisoned therein to the new state prison. ('15 c. 112 § 1)

[9289—]2. **Same—Transfer of prisoners to new prison**—All prisoners so transferred shall be imprisoned in the new prison for the time and upon the terms and conditions prescribed and authorized by virtue of their respective commitments to the old prison. ('15 c. 112 § 2)

[9289—]3. **Same—State prison at Stillwater**—The new prison may be described and designated as the "State Prison at Stillwater;" but failure to so designate shall not invalidate or in any way affect any judgment or sentence. ('15 c. 112 § 3)

[9289—]4. **Same—Board of control to sell or lease old prison**—The board of control is hereby authorized and empowered to sell and convey or lease for a term of years, the buildings and land constituting the old prison and prison site for such a price and on such terms as it deems advisable and to that end it is hereby authorized to execute and deliver in the name of the state and in its behalf all conveyances and leases which may be necessary or desirable to the carrying into effect of the provisions of this section. All moneys received by the board of control, either as rental or as the consideration for the conveyance of said old prison and prison site shall be paid into the state treasury and credited to the general revenue fund of the state. ('15 c. 112 § 4)

[9294—]1. **Board of control to insure**—The board of control of state institutions is hereby authorized and empowered in their discretion to insure the State of Minnesota against loss by fire or tornado all or any part of the State property known as the State Prison at Stillwater in any insurance companies authorized to do business in this State, in such amount from time to time as such board may determine, and to pay the premiums for all such insurance in the same manner as other expenses of said state prison and to deduct the same from the revolving fund of said institution. ('17 c. 278 § 1)

[9294—]2. **Same—Insurance how diminished**—Immediately upon procuring any such insurance the state board of control shall give notice thereof to the commissioner of insurance of this state, stating the amount of each policy and containing a description of the property insured thereby, and thereupon such commissioner shall notify the state treasurer thereof. Thereupon the state insurance carried upon such property by virtue of section 3251, General Statutes of 1913, as amended by chapter 99, General Laws of 1915 [3252], shall be diminished in an amount equal to such insurance procured by the state board of control and the premiums charged by the state of Minnesota to the account of said state prison shall be accordingly reduced. ('17 c. 278 § 2)

9304. Opium, intoxicating liquors, firearms, explosives—Penalty—Any person who brings, sends, or in any manner causes to be introduced into the state prison or the state reformatory, of this state, or within the grounds belonging to any such institution, any opium, morphine, cocaine, or other narcotic, or any intoxicating liquor of any kind whatever, or any firearms, weapons, or explosives of any kind, without the consent of the warden of the state prison or the superintendent of the state reformatory, respectively, shall be guilty of a felony and upon conviction thereof shall be punished by im-

prisonment in the state prison for a term of not less than one year nor more than three years. (Amended '15 c. 241 § 1)

9309. Diminution of sentence—

A life convict in the state prison, whose sentence is commuted to one for a term of years, is entitled to diminution of his term for good conduct, commencing on the day of his arrival in prison, and not from the time of commutation (127-102, 148+896, L. R. A. 1915B, 95). Prisons, ¶15.

[9313—]1. **Sale of land acquired in collection of debt for binding twine**—Whenever the State of Minnesota shall have heretofore or shall hereafter acquire title to any land in the course of legal proceedings for the collection of a debt arising out of the sale by the state of farm machinery, binding twine or other articles manufactured or improved at the state prison, the same may be sold by the governor to such persons and for such price as shall be recommended by the warden of the state prison and the governor is hereby authorized to execute in the name of the state and in its behalf any deeds or conveyances necessary or desirable to convey the title and interest of the state to the purchaser and the proceeds of such sale shall be paid into the state treasury to the credit of the appropriate prison fund. ('17 c. 58 § 1)

9319. Parole of prisoners—

A life convict, whose imprisonment has been commuted to a term of years, is entitled to good conduct diminution, commencing from the date of his arrival in prison, and not merely from the time of the commutation (127-102, 148+896, L. R. A. 1915B, 95). Prisons, ¶15.

[9321—]1. **Guards at state prison and reformatory—Hours of service**—Guards employed at the Minnesota state prison at Stillwater and the state reformatory at St. Cloud shall not be required to work to exceed ten (10) hours per day, except in cases of extraordinary emergency or necessity. ('17 c. 422 § 1)

By § 2 the act takes effect January 1, 1918.

STATE REFORMATORY

9322. Location and management—

See § [9321—]1.

9324. Transfer of prisoners—The board of control may transfer from the reformatory to the state prison and from the state prison to the reformatory, whenever, in its judgment, such transfer will be advantageous to the person transferred, or to the institution from which such transfer is made. Said board shall make all needful rules for the employment, discipline, instruction, removal, release, or return of inmates of said institution. (Amended '17 c. 237 § 1)

[9331—]1. **Discharge of inmates—Clothing and money**—Upon the discharge of any inmate of the state reformatory, the superintendent, at the expense of the state, shall furnish each inmate released with one good, serviceable suit of clothing and underclothing, and, when released between October 1 and March 31 following, with a good, serviceable overcoat; and he shall pay to each inmate, when released, twenty-five dollars in money drawn from the current expense fund. ('17 c. 159 § 1)

[STATE REFORMATORY FOR WOMEN]

[9333—]1. **Separate institution established—Who and how committed—Term of imprisonment**—There is hereby created and established a separate institution for the care, training and education of women, to be known as the State Reformatory for Women. Any woman over the age of eighteen (18) years convicted by any court or magistrate of petty larceny, of vagrancy, habitual drunkenness, of being a common prostitute or frequenting disorderly houses or houses of prostitution, or any woman over the age of eighteen (18) years convicted of a felony, may be sentenced and committed to the State Reformatory for Women, which sentence shall be without limit as to time. The commitment and accompanying papers shall be the same as upon a sentence to the state reformatory for males. Such imprisonment shall not

exceed the maximum term and may be terminated by the board of parole at any time after the expiration of the minimum term provided by law for the crime. ('15 c. 324 § 1)

[9333—]2. **Board of Control to invite bids, etc.**—As soon as practicable after the passage of this act, the Board of Control of this state shall invite in such form or manner as its members may deem best, proposals for a site for said State Reformatory for women hereby created and established of not less than one hundred and sixty (160) acres, situated in any county in this state, and in selecting such site said Board of Control shall consider, among other things, the healthfulness of the location, the character and quality of the soil, facilities for drainage, the quality of the water supply, the market value of the site offered, and its convenience to railroad transportation and to the needs of the state. ('15 c. 324 § 2)

[9333—]3. **Title, how secured, etc.**—When said Board of Control or a majority of its members has selected the site, in the way and manner provided in the preceding section hereof, said Board of Control shall, without unnecessary delay, proceed to acquire an unincumbered title in fee simple thereto in the name of this state, either by a gift or by grant or purchase, and if by grant or purchase shall pay therefor such sum as said Board of Control shall deem to be the reasonable market value thereof, which payment shall be made out of the money hereinafter appropriated, upon the execution and delivery of a deed therefor vesting in the state the title of said land in fee simple; but if no site is proposed or offered which meets with the approval of the said Board of Control (or a majority of its members), or if such a site is offered and agreed upon, but said Board of Control is unable to purchase the same at what said Board of Control deems to be its reasonable market value, then the said Board of Control shall forthwith invite further and additional proposals and shall so continue until a site has been proposed and offered which meets with the approval of the said Board of Control (or a majority of its members) and which can be purchased at what said Board of Control deems to be its reasonable market value, or less. ('15 c. 324 § 3)

[9333—]4. **Plans and estimates**—When a site for said state reformatory has been acquired by the state, it shall be the duty of the Board of Control of this state to cause to be prepared plans for and estimates of the cost of the necessary buildings and improvements for same, and it shall submit such plans and estimates to the legislature of 1917, with its recommendations thereon. The plans and estimates shall be based on what is known as the "cottage plan," in order that the inmates of said reformatory may be properly classified and grouped and their occupations and training diversified. ('15 c. 324 § 4)

[9333—]5. **Financial control, etc., vested in board of control—Powers**—The financial control and general supervision of said State Reformatory for Women hereby created and established, shall be and hereby is vested in the Board of Control of this state as now provided by law in respect to other state institutions; and said Board of Control is hereby vested with power and authority to appoint a superintendent and such other officers and employes as said Board of Control may deem necessary and proper for the due administration of the affairs of said Reformatory for Women, and may prescribe their duties, and may fix their compensation; and said Board of Control is also hereby vested with power and authority to make and establish such rules and regulations for the government and management of said Reformatory for Women, and for the education, employment and training, discipline and safekeeping of the inmates thereof as may be deemed by it to be expedient and proper; provided, that all the officers of said reformatory shall be women. ('15 c. 324 § 5)

[9333—]6. **Board of women visitors**—The advisory board of five women heretofore known as the "Board of Women Visitors of the Minnesota Home School for Girls," which board shall hereafter be known as the "Board of Women Visitors," shall advise with the said Board of Control with reference to the architecture and the arrangement of the buildings erected under the

provisions of this act; to visit said reformatory at or about the time the buildings therefor are completed, and report to and advise with said Board of Control as to the style and character of the furnishings thereof, and fixtures to be placed therein, and upon such other matters as the said Board of Control may deem necessary. ('15 c. 324 § 6)

[9333—]7. **Duties of board of visitors**—It is hereby made the duty of said board of visitors to visit said reformatory at least twice in each year, at such time as the members of said board may deem best; to carefully inspect the buildings at each visit, and carefully examine into the condition thereof—sanitary and otherwise; to inquire into the treatment and condition of the women therein; and for this purpose may examine any or either of said women separate and apart from any of the officers of the said reformatory; and as soon as may be, after each visit, to report, in writing, to the Board of Control, making in connection therewith such recommendations as to said board of visitors shall seem meet and proper, in order to promote and conserve the best interests of the said reformatory and the inmates thereof. ('15 c. 324 § 7)

[9333—]8. **Visitors serve without compensation—Expenses**—The members of the said board of visitors shall serve without compensation, excepting that they shall receive and be paid their expenses necessarily incurred in the performance of their said duties, their expenses to be audited by the said Board of Control and paid out of any appropriation made for such state institutions and debited to the account thereof. ('15 c. 324 § 8)

[9333—]9. **Appropriation**—For the purpose of carrying out the provisions of this act, the sum of thirty thousand (30,000) dollars, or so much thereof as may be necessary, is hereby appropriated out of any money in the state treasury not otherwise appropriated. ('15 c. 324 § 9)

CHAPTER 106

JAILS, LOCKUPS, AND JUVENILE OFFENDERS

COUNTY JAILS

9334. How constructed and maintained—

134-473, 159-129.

Where the county constructed a building for a jail and sheriff's residence, and fitted up and used one cell room as a jail, but, having no other county building, appropriated the remainder of the building for use as county offices and installed the several county officers therein, the sheriff cannot oust the county officers therefrom for the purpose of appropriating the building to his personal use as a residence (161+210). Counties, ~~§~~ 107.

9336. **United States prisoners**—Whenever any person is committed to any jail by any process issued under authority of the United States, the sheriff or jailer shall receive such person into custody, and safely keep him until discharged by due course of law, subject in all respects to the same liabilities and remedies as though committed under process issued under state authority. The United States shall pay to the sheriff, for the use of the county, for each prisoner so kept and boarded, the sum of seventy cents per day. (Amended '17 c. 304 § 1)

9344. **Compensation for boarding prisoners**—Every sheriff in charge of a county jail shall receive from the county compensation for board and washing for prisoners as follows:

On the last day of each month he shall render to the county board a verified statement showing the name of each prisoner and the number of days boarded. The pay shall be seventy-five cents per day and proportionately for a fractional day for each prisoner. In every county where the sheriff's

compensation for board of prisoners is fixed by special law it shall so continue unless the county board by unanimous vote shall elect to come under the general law after which it shall be governed by this section provided that the provisions of this act shall not apply to any county in this state now or hereafter having a population of more than seventy-five thousand (75,000). (Amended '17 c. 184 § 1)

[9348—]1. **Board in counties having 215,000 and not more than 300,000 inhabitants**—Every sheriff in charge of a county jail in each county of this state now or hereafter having a population of not less than 215,000 and not more than 300,000 inhabitants, shall receive from the county as compensation for board and washing for prisoners the sum of \$4.00 per week for each prisoner. On the last day of each month such sheriff shall render to the county board a verified statement showing the name of each prisoner and the number of days boarded. For caring for prisoners for a fractional part of a week such sheriff shall be compensated at the same rate per week as that hereinbefore prescribed. ('15 c. 295 § 1)

Section 2 repeals inconsistent acts, etc.

9349. Jails, how kept—

161+210; note under § 9334, ante.

9350. Clothing, bedding, food, and care—

161+210; note under § 9334, ante.

WORK FARMS IN CERTAIN COUNTIES

9381. Appropriations—Tax levy—Any such county wishing and deciding to provide a work farm by itself alone as indicated in Section two (9375) of this act, may through its county commissioners appropriate the first year not to exceed the sum of \$35,000.00 for the purchase of the land and establishment and equipment of the same, or not to exceed the sum of \$20,000.00 if it shall decide to provide such work farm in cooperation with any such city, as herein provided.

Such work farm commissioners shall determine by resolution each year, prior to July 1st, the amount of money necessary for the equipment and maintenance of the work farm the following year, over and above the probable receipts for the account of said work farm fund from all sources other than taxes, and a certified copy of such resolution shall be forthwith forwarded to the county board, if such work farm be established and maintained by such county alone, and such board shall at its regular meeting in July include such amount in its annual levy of county taxes for the ensuing year, unless after due hearing such amount be determined to be excessive and unnecessary, in which event such amount may be reduced accordingly by the board.

That in case such work farm be established and maintained by any such county and city jointly, certified copies of such resolution determining the said amount necessary for the equipment and maintenance of said work farm for the following year, shall be forthwith forwarded to the county board of such county and to the city council of such city, and such board shall at its regular meeting in July, and said city council shall at some meeting prior to October tenth, include the proper share of said county and city in their annual levies of county and city taxes, respectively, unless such amounts shall be reduced by said county board and city council in the manner hereinbefore provided, to amounts that shall be deemed reasonable and necessary by said county board and said city council.

But in no case shall the amount of such levy in any one year after the first year exceed the sum of one-fifth ($1/5$) of one mill on the dollar of the assessed valuation of property in said county, when said work farm is maintained by such county alone; nor exceed the sum of one-tenth ($1/10$) of one mill on the dollar of the assessed valuation of property in said county, for said county's share, of such tax levy for said work farm fund, when said work farm shall be maintained by said county and city jointly. Such amounts when collected shall be apportioned by the county auditor and be credited to the

"county work farm fund" or to the "joint county and city work farm fund," as the case may be. At the end of each year any balance remaining in said "joint county and city work farm fund" to the credit of said city's share, shall be apportioned and paid to said city, if the council of said city shall so demand.

All moneys received for such work farm shall be deposited in the treasury of said county to the credit of such fund and shall not be used for any other purpose, and shall be drawn upon by the proper officials of said county upon the properly authenticated vouchers of said "board of work farm commissioners" or "board of joint county and city work farm commissioners," as the case may be. (Amended '15 c. 212 § 1)

[9384—]1. **Correction farm for women—Powers of board of work farm commissioners—Superintendent—Female offenders, how sentenced—**That the Board of County Commissioners of any county to which this act shall apply may acquire additional land not contiguous to any correction or work farm heretofore or hereafter established for men, not exceeding forty acres in extent, and may establish and maintain thereon a correction or work farm for women only, such county acting by itself alone or in co-operation with any city of the first or second class located in such county, whenever such city shall have the power under its charter to acquire land for and establish and maintain such correction or work farm. That whenever the Board of County Commissioners of any such county, or the city council of any such city shall decide by resolution duly adopted, to establish and maintain such correction or work farm for women and shall acquire the needed land therefor, the Board of Work Farm Commissioners hereinbefore provided for shall forthwith have full charge and control of such correction or work farm for women, the erection of all buildings and the making of all improvements thereon. The superintendent of the work farm for men, if one shall have been established, in any county to which this act applies, shall also be superintendent of such correction or work farm for women, but said commission shall have authority to employ all other necessary assistants for carrying on said institution, and shall in all other respects have the same powers and duties in connection therewith, as is hereinbefore provided for the management and control of such correction or work farm for men, in order that such farm for women may be maintained and female prisoners be cared for thereon in substantially the same manner as is hereinbefore provided for men. That female offenders may be sentenced to confinement on said correction or work farm for women by any of the courts in such county in like manner as male offenders are sentenced to said correction or work farm for men, and such Board of Work Farm Commissioners shall have the same jurisdiction and control over such female prisoners as over male prisoners sentenced to said farm. ('13 c. 188, amended '15 c. 212 § 2)

[9384—]2. **Transfer of prisoners from jail to workhouse—Power of district judge—**That in any county of this State in which there is now or shall be hereafter maintained by any county or by any city and county, a workhouse, correctional or work farm for the confinement of criminal offenders, any district judge of the judicial district in which said county is situated, shall have the power, either of his own motion, or on the application of the county attorney of such county, for sufficient cause, to order any prisoner who shall be confined in the county jail of such county under sentence to such jail by any district judge, justice of the peace or municipal judge, to be transferred from such county jail and recommitted to any such workhouse, correctional or work farm at hard labor, for the remainder of the term for which such prisoner was originally sentenced. ('17 c. 20 § 1)

Section 3 repeals inconsistent acts, etc.

[9384—]3. **Same—Orders for transfer and recommitment—Duties of sheriff and superintendent—**That whenever any such district judge shall make an order for the transfer of any prisoner from the county jail to any such workhouse, correctional or work farm such order shall be made in duplicate by such judge, shall recite therein the name of the court by which said

prisoner was sentenced to such county jail, the date of sentence, the general nature of the offense for which sentenced, the length of the original sentence, the length of such sentence still remaining, and any other facts obtainable from the commitment under which said prisoner may be held, that will furnish material information regarding said case, and shall direct the superintendent or other keeper of such workhouse, correctional or work farm, to safely keep such prisoner at hard labor for the remainder of such original term of sentence, as stated in such order, unless otherwise released according to law, or the parole rules and regulations of such workhouse, correctional or work farm. That both of said orders for transfer and recommitment of such prisoner to such workhouse, correctional or work farm, shall be filed forthwith, with the sheriff of such county or other keeper of said jail, and said sheriff or other keeper of said jail shall thereupon retain one of said orders of transfer and recommitment in his possession and shall without delay, at the expense of the county, transfer such prisoner named in such order and deliver him or her, together with the other of said duplicate orders for the transfer and recommitment of such prisoner to the superintendent or other keeper of said workhouse, correctional or work farm, who shall retain said order and safely keep said prisoner named therein for the remainder of said sentence at hard labor, as specified in said order, unless otherwise released as hereinbefore provided. That said order for transfer and recommitment of any such prisoner, as hereinbefore mentioned, shall have the same force and effect as the writ of commitment issued by the court which sentenced said prisoner in the first instance, and in addition shall be full authority for the holding and keeping of said prisoner, at hard labor, by the superintendent or other keeper of said workhouse, correctional or work farm, and for his apprehension by any peace officer in case of the escape of such prisoner from any such workhouse, correctional or work farm. On the request of any district judge of the district in which any such workhouse, correctional or work farm is located, the sheriff of any such county shall without delay furnish a copy to such judge of any commitment in his possession. ('17 c. 20 § 2)

JUVENILE OFFENDERS

9392. How kept—Every sheriff or other person having charge of a minor under the age of eighteen years, chargeable with any crime, shall provide a separate place of confinement for him, and under no circumstances place him with grown-up prisoners. No court or magistrate shall commit a minor under the age of fourteen years to a jail, lock-up, or police station pending hearing or trial; and, whenever he is unable to procure bail, he may be committed to the care of the sheriff or other public officer, or to the probation officer, who shall keep him in some suitable place provided by the city or county. Every minor while in confinement shall be provided with good reading matter, and his relatives and friends likely to exert a good influence over him shall at all reasonable times be permitted to visit him. (Amended '17 c. 265 § 1)

9393. Trial of minors—Who excluded—At the hearing or trial of a minor under the age of eighteen, charged with any crime, the trial judge or magistrate, prior to his being brought into the courtroom, shall clear the same of all persons except officers of the court, including attorneys, witnesses, relatives, and friends. (Amended '17 c. 265 § 2)

PART V

CONSTRUCTION OF STATUTES AND EXPRESS REPEALS

CHAPTER 107

STATUTES

THE REVISED LAWS AND THEIR EFFECT

9398. How cited—When to take effect—Session laws not affected—

130-397, 153+758, Ann. Cas. 1916E, 157.

Cited and applied (131-332, 155+107).

9399. Former laws not revived—Vested rights not affected—

The repeal of 1899 c. 265 by this section did not affect payments ratified and validated by the statute (130-462, 153+876).

9402. Continuation of former laws—

The statutes embodied in a general revision are presumed not to have changed the former laws, unless such intention clearly appears (133-326, 158+606). Statutes, ¶231.

9405. Same—Powers of commission—Copyright—

The legislature of 1905 did not enact the statements contained in the report of the commission (130-256, 153+324; 130-256, 153+593).

9406. Same—Published laws as evidence—

In ascertaining the intention of the legislature, recourse may be had to the report of the revising commission, taken in connection with the history of the law, the purpose sought to be accomplished by it, and the action of the legislature in changing or not changing the act as reported to them (133-326, 158+606). Statutes, ¶231.

CONSTRUCTION

9408. When to take effect—

A statute enacted without the usual declaration as to the time it shall take effect, but which acts upon certain specified classes or persons at different dates, as to some from the date of enactment and as to others at a future date, goes into effect as an entirety and at the time prescribed by law for the taking effect of statutes after approval by the governor (133-178, 158+50). Statutes, ¶248.

9409. Revision to operate as repeal, when—

135-145, 160+253.

9411. Rules of construction—

In general—Where two sections of a statute are inconsistent, the one must stand which best conforms to the intent and policy of the statute (134-131, 158+798). Statutes, ¶207.

An amendment of a law is presumed to have been made with an intent to effect a change in the existing law (134-131, 158+798). Statutes, ¶181(1), 230.

Effect of amendment of statute "to read as follows" stated (see 134-131, 158+798; 134-334, 159+798, L. R. A. 1917A, 1223). Statutes, ¶164.

Subd. 1—The language of a statute is to be constructed in harmony with the ordinary rules of grammar, except where such construction will lead to a result obviously contrary to the intention of the legislature (124-34, 144+417, 51 L. R. A. [N. S.] 244). Statutes, ¶189.

Subd. 3—Where three referees are appointed by the court to make a partition of real estate, a partition reported and concurred in by two of them is valid (133-49, 157+908). Partition, ¶94(1).

There being now no "president of the common council" in the city of St. Paul, the direction in the municipal court act of that city that such president and the two judges of such court shall meet and select a jury list is complied with by the meeting and action of the judges alone, in view of this subdivision (134-309, 159+789). Jury, ~~§~~66(2).

[9411—]1. Amendment by reference to General Statutes 1913—That all bills heretofore or hereafter introduced at this and subsequent sessions of the legislature purporting to amend or repeal any part or parts of the laws of this state by reference in the title and body of such bills to the General Statutes of Minnesota, 1913, shall be taken and construed to mean, and shall have the same force and validity as if the said bills referred to the original enactment or enactments in the Revised Laws of Minnesota for 1905, and the subsequent General Laws of Minnesota including those for the year 1905, and set forth in the General Statutes of Minnesota, 1913. ('15 c. 59 § 1)

9412. Particular words and phrases— * * *

8-A. Juvenile court—The words "juvenile court" shall mean the court having jurisdiction in the particular county over cases of dependent, neglected and delinquent children, whether the same be a district or probate court.
* * * (Amended '17 c. 233 § 1)

1917 c. 233 amends section 9412 by adding a new subdivision to be known as subdivision 8-A.

Subd. 6—The words "civil process" include the original summons in a civil action (132-389, 157+642). Holidays, ~~§~~5.

The service of summons on Lincoln's Birthday does not confer jurisdiction (132-389, 157+642). Holidays, ~~§~~5.

The publication of an ordinance of the city of St. Paul on Memorial Day is not unlawful (129-383, 152+777, Ann: Cas. 1916E, 845). Municipal Corporations, ~~§~~110.

Thanksgiving Day is not a holiday (129-522, 151+273). Time, ~~§~~10(1, 2).

Subd. 14—130-202, 153+517; notes under § 9413, post.

Cited and applied (127-84, 148+891).

Subd. 15—"Filing" defined (121-173, 141+101).

Subd. 21—Thanksgiving Day, not being a legal holiday, is not included in this subdivision (129-522, 151+273). Time, ~~§~~10(1, 2).

9413. Newspapers—Qualifications—

The proof of publication must show that the newspaper has a circulation of at least 240 copies at the place where the notice is given, and a mere statement that the newspaper has the requisite number of paid subscribers, without showing where the papers are actually circulated, is insufficient (130-202, 153+517). Taxation, ~~§~~706.

A newspaper qualified to publish legal and official notices held a newspaper of "general circulation" (123-1, 142+886). Newspapers, ~~§~~3(1).

9418. Affidavit required—Evidence—

The affidavit required by this section to be filed with the county auditor is prima facie evidence of the qualification of a newspaper only in case it states "the required facts"; and showing that such an affidavit has been filed, without showing the facts stated therein, does not establish such qualification (130-202, 153+517). Taxation, ~~§~~706, 707.

[9419—]1. Certain defective affidavits—Curative—That all affidavits of the fact of the publication of any and all legal notices in any newspaper in this state heretofore made which omit to state, "That said newspaper has been circulated in and near its place of publication to the extent of at least two hundred and forty (240) copies regularly delivered to paying subscribers," such affidavits being in other respects in the form required by statute are hereby declared to be legal and valid and the record of such affidavits heretofore actually recorded in the office of the register of deeds of the proper county shall be in all respects legal and valid and such record shall have the same force and effect in all respects for the purpose of legal notice and evidence and otherwise as may be provided by law in other cases. ('17 c. 506 § 1)

[9419—]2. Same—Pending actions—Provided that the provisions of this act shall not apply to any action or proceeding now pending in any of the courts of this state. ('17 c. 506 § 2)

CHAPTER 108

EXPRESS REPEAL OF EXISTING LAWS

9446. Session Laws of 1885—

1885, c. 145, relating to the incorporation of villages, and providing that all villages theretofore incorporated under the general statutes should be governed by the provisions thereof, though repealed by this section, nevertheless by force of § 1202, remains in force as to existing villages, which were not reincorporated as provided by § 1203 (124-107, 144-464). Municipal Corporations, ~~c.~~10.

*

APPENDIX

SUPP.G.S.MINN.'17

(827)*

CONSTITUTION OF THE STATE OF MINNESOTA

ARTICLE 1 BILL OF RIGHTS

§ 2. Rights and privileges of citizens—

Who are citizens—Infant child of naturalized father is citizen, though born abroad (121-376, 141+801). Citizens, ¶9.

Class legislation—The workmen's compensation act held not unconstitutional as class legislation (126-286, 148+71, L. R. A. 1916D, 412). Constitutional Law, ¶208(7).

G. S. 1913 § 2634, limiting speed of motor vehicles, while passing horse-driven by specified persons, to four miles an hour, is not invalid as class legislation (128-460, 151+275). Constitutional Law, ¶208(3).

G. S. 1913 § 1786, requiring notice before suing cities for injuries from contaminated water, is not unconstitutional as discrimination against private parties operating waterworks (130-41, 153+121, L. R. A. 1915E, 749). Constitutional Law, ¶85.

G. S. 1913 §§ 3349, 3355, held not class legislation, because based upon an arbitrary distinction between widows of common-law marriages and widows of ceremonial marriages (126-332, 148+279). Constitutional Law, ¶208(3).

Ordinance requiring weighing of coal held not discriminatory or unreasonable (121-202, 141+106, Ann. Cas. 1914C, 678). Constitutional Law, ¶211; Weights and Measures, ¶5. Violation of ordinance as crime (121-207, 141+110; 121-525, 141+112; 121-526, 141+112).

1915 c. 105, which provides that a contractor misusing moneys paid him by the landowner is guilty of crime, is not invalid as class legislation (134-35, 158+829). Constitutional Law, ¶208(6).

Infringing right of contract—G. S. 1913 § 3858, requiring notice of assignments of wages to be given to the employer, is not unconstitutional as infringing the right of contract, or as class legislation (125-211, 146+359, Ann. Cas. 1915C, 688). Constitutional Law, ¶89(4), 208(7).

G. S. 1913 §§ 3136, 3137, are not unconstitutional on the ground that a prohibition of soliciting of orders for the sale of liquors is a reasonable restraint upon the liberty of contract (126-68, 147+829). Constitutional Law, ¶89(1).

This section is not violated by a statute which applies only to persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exist for making a distinction between those within the class and those without (126-286, 148+71, L. R. A. 1916D, 412). Constitutional Law, ¶211.

G. S. 1913 §§ 6083-6088, providing that the county board or auditor may license any voter in the county as an auctioneer, and providing a penalty for selling property at auction without such license, is not violative of this section (127-150, 149+9, L. R. A. 1915B, 151). Constitutional Law, ¶89(1).

The inheritance tax law, as amended by 1911 c. 209, is not violative of this section (128-371, 150+1094, L. R. A. 1916A, 901). Constitutional Law, ¶119, 229(1).

§ 3. Liberty of the press—

Qualified privilege of newspaper in discussion as to official misconduct determined (123-136, 143+260). Libel and Slander, ¶50½.

The interest which every citizen has in good government requires that the right be not unduly curtailed to express his opinion upon public officials and political leaders, to seek and convey information concerning their plans and purposes, and to freely criticize proposed methods and measures. In this case a publication affecting a member elect of the legislature, held not libelous per se within the rule stated (131-355, 155+212). Libel and Slander, ¶10(2).

§ 4. Trial by jury—

Not entitled to jury trial—There is no right to a jury trial in an equitable action; and an action to charge defendant as trustee for his acts in wrecking a corporation by con-

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spiring with others to cause it to be adjudicated a bankrupt, and to purchase its assets for a small fraction of their value, is an equitable action, as to which there is no right of trial by jury (130-252, 153+527). Action, \S 25(2); Jury, \S 10, 14(5).

This section does not give the right of trial by jury to persons charged with petty offenses under the ordinances of a city (129-383, 152+777, Ann. Cas. 1916E, 845). Jury, \S 23(1).

Where a party is ordered to interplead, and his right to a fund paid into court by a defendant depends upon the power of the court to relieve him from the legal consequences of an accepted bid, he is not entitled to a jury trial (135-115, 160+500, L. R. A. 1917D, 741). Jury, \S 13(19).

Where one defendant held title to land impressed with a trust in favor of plaintiff, and conveyed to his codefendant, who had notice of the trust, and the latter conveyed to a third person, who had like notice, held, that plaintiff had no cause of action at law for damages against the defendants and was not entitled to a trial by jury (133-452, 158+707). Jury, \S 14(5).

Proceedings under G. S. 1913 \S 6646, for an assessment against stockholders of an insolvent corporation, are summary and informal, and the stockholders are not entitled to a jury trial of the questions involving the authority of the court to order an assessment (132-9, 155+754). Jury, \S 14(1).

On appeal from the probate court to the district court from the allowance of a will the parties have no constitutional right to a trial by jury of the issues of testamentary capacity and undue influence (131-439, 155+392). Jury, \S 17(3).

Mixed actions—In a mixed action, seeking both legal and equitable relief, a party is entitled to a jury trial of the legal issues (130-252, 153+527). Jury, \S 13(14).

To secure a jury trial of legal issues in a mixed action demand must be made that the specific issues proper for trial by jury be so tried (130-252, 153+527). Jury, \S 25(2).

Five-sixths jury verdict—The five-sixths jury law applies in a state court though the action is based on a federal statute (126-260, 148+106). Trial, \S 321½.

Where a verdict is unanimous the defeated party cannot raise the question of the constitutionality of the five-sixths jury law (132-391, 157+650).

Invasion of province of jury by court—For the court to indulge in argument on the facts, in its charge to the jury, is an invasion of this section (122-479, 142+801). Criminal Law, \S 807(1).

It is improper for the trial court to indicate its belief as to the credibility of witnesses (122-301, 142+812, 48 L. R. A. [N. S.] 842, Ann. Cas. 1914D, 804). Trial, \S 29(2).

Failure of the court in a ditch appeal to charge the jury that they should not consider the amount of damages awarded by the viewers held to invade the province of the jury (122-392, 142+802). Drains, \S 36(4); Trial, \S 133(1).

§ 5. Excessive bail and fines—Cruel or unusual punishment—

G. S. 1913 $\S\S$ 8717-8726, relating to abatement in equity of disorderly houses, held not violative of this section (126-95, 147+953). Criminal Law, \S 1214.

§ 6. Rights of accused—

126-386, 148+458.

Cited in dissenting opinion (128-163, 150+787).

G. S. 1913, $\S\S$ 8717-8726, providing for abatement of disorderly houses by suit in equity, held not violative of the guaranty that one accused of crime shall be confronted by the witnesses against him (126-95, 147+953). Criminal Law, \S 862(1).

The "speedy public trial" contemplated by this section need not be within the time and under the conditions mentioned in G. S. 1913 \S 8510 (127-505, 150+171).

§ 7. Same—Due process of law—Bail—Habeas corpus—

121-431, 141+806.

Twice in jeopardy—"Twice in jeopardy" and "twice in jeopardy of punishment" mean the same thing (123-413, 144+142). Criminal Law, \S 161.

The statute providing for increased punishment of persons previously convicted of a similar offense (\S 8491) is not violative of this section, as placing the accused twice in jeopardy (123-413, 144+142). Criminal Law, \S 162.

Acquittal of the charge of carnal knowledge of a female under the age of consent on January 16, 1914, is not a bar to another prosecution for the same offense committed by defendant on the same female on July 16, 1914, there having been three indictments found prior to the former trial, one of which charged the date July 16, 1914, but defendant having been put on trial under the indictment charging the date January 16, 1914, and the evidence on that trial having been confined to acts of intercourse occurring prior to but not after January 16, 1914; but the prosecution would have been barred if the state had been permitted to introduce evidence under such indictment of an act of intercourse occurring July 16, 1914, without being first compelled to elect to stand on the indictment charging an offense on January 16, 1914, but if an election is made, the introduction of evidence of other acts as tending to prove the act relied on will not prevent a subsequent prosecution (161+590). Criminal Law, \S 186, 198.

Self-incrimination—The evidence of one of several defendants, voluntarily given on a former trial, was properly received in evidence against such defendant, as against the objection that it was self-incriminatory (127-445, 149+945). Criminal Law, \S 539(2).

None but a legal voter could raise an objection that an answer to the question how he voted, might tend to incriminate him, and the court was not required to inform him that he might claim this privilege (126-268, 148+276). Witnesses, \S 306, 307.

The fact that in an investigation by a grand jury of a charge against another party the defendant has been required to give evidence which would tend to show that he himself had committed another crime cannot give him perpetual immunity from prosecution for the offense committed by himself and which may be proven by independent evidence (126-521, 148+471). Criminal Law, ¶42.

Election contestant cannot invoke for alleged illegal voters rights to refuse to testify on the ground of incrimination; privilege being personal (162+522). Witnesses, ¶306.

Deprivation of property—Vested rights—A conditional vendor of personal property, whose contract was executed prior to the enactment of G. S. 1913 §§ 8717-8726, had no vested right to the use of such property in violation of such statute, though prior to the enactment of such statutes such sale and use were not unlawful (126-78, 147+951, 52 L. R. A. [N. S.] 932, Ann. Cas. 1915D, 549). Constitutional Law, ¶92.

G. S. 1913, § 8971, making it an offense to advertise any business relating to procurement of divorces, is not invalid as depriving of a vested right (123-227, 143+780). Constitutional Law, ¶92.

As between the state and members of a fire department a pension is a gratuity which may be taken away at any time before it accrues without affecting a vested right (125-174, 145+1075, Ann. Cas. 1915C, 749). Constitutional Law, ¶102(2).

Where a member of the Minneapolis Fire Department Relief Association is determined by the association to be disabled, within the meaning of the constitution and by laws of such association, such member obtains a vested legal right to such benefit, of which he cannot be deprived except by due process of law (124-381, 145+35, 50 L. R. A. [N. S.] 1018). Constitutional Law, ¶102(2).

An ordinance of the city of St. Paul requiring the St. Paul City Railway Company to construct a new and additional car line, in accordance with a reserved power in the franchise ordinance, held not to violate any of the constitutional rights of the railway company (127-191, 149+195). Constitutional Law, ¶133.

Statutes curing contracts tainted with usury do not impair vested rights (132-19, 155+765). Corporations, ¶657(1).

Due process of law—G. S. 1913 §§ 2820, 2823, imposing on a school district, pupils of which attend another district maintaining a special school for agricultural and domestic science training, liability for tuition of such pupils, is not violative of this section (122-254, 142+325, 47 L. R. A. [N. S.] 200). Constitutional Law, ¶278(1).

Failure to name the owner of an interest in land in the plat and notices under G. S. § 1567, in proceedings to condemn land for the widening of a street, held not a deprivation of property without due process of law, in view of the provision of the statute that the names of owners shall be stated "so far as they can readily be ascertained" (161+231). Constitutional Law, ¶281; Eminent Domain, ¶167(2).

G. S. 1913 §§ 2348, 2349, providing for reassessment by the tax commission on complaint, are not invalid as a denial of due process of law (121-421, 141+839). Constitutional Law, ¶284.

1901 c. 167, providing that a village council may, on its own motion, order a sidewalk constructed, is not unconstitutional, because it does not give property owners an opportunity to be heard as to the propriety or necessity of the proposed sidewalk (124-471, 145+377). Constitutional Law, ¶289.

St. Paul City Charter tit. 3 c. 6 §§ 7, 23, as amended, relating to local assessments, does not violate due process of law, in that it permits an enforcement of the assessment without a sale of the property, a redemption being permitted (123-1, 142+886). Constitutional Law, ¶290(7).

G. S. 1913 §§ 7036, 7037, in giving one transporting and storing property at the request of the owner a superior lien to a chattel mortgagee, does not take property without due process of law (124-144, 144+750). Constitutional Law, ¶300.

G. S. 1913 § 4314 et seq., imposing upon a common carrier a penalty for failure to adjust claims for damages, held not unconstitutional as denying due process of law (126-138, 147+960, Ann. Cas. 1915D, 823). Constitutional Law, ¶303.

G. S. 1913 § 7735, providing for service on a soliciting agent of a foreign railroad company maintained in this state, held due process of law, as applied to service of process in a suit growing out of business solicited and obtained by such agent in this state (129-104, 151+917, L. R. A. 1916E, 232, Ann. Cas. 1916E, 335). Constitutional Law, ¶309(3).

G. S. 1913 §§ 8719-8721, relating to the presumptions arising from the maintenance of a disorderly house, are not violative of due process of law, being merely a change in procedure, without reference to whether the cause of action or rights to which it would apply were already in existence or would accrue thereafter (126-78, 147+951, 52 L. R. A. [N. S.] 932, Ann. Cas. 1915D, 549). Constitutional Law, ¶311.

G. S. 1913 § 5284, in rendering a purchaser of timber liable on a resale without a hearing, held not to deprive the purchaser of due process of law (122-400, 142+717). Constitutional Law, ¶318.

The workmen's compensation act does not deny due process of law (128-221, 150+623). Master and Servant, ¶347.

G. S. 1913 § 8143, requiring action to set aside a foreclosure sale or defense thereto for certain defects to be brought or interposed within a certain time, is not a denial of due process of law, as applied to one in possession when the statute was passed, and who does not claim under the chain of title affected by the foreclosure (130-520, 153+997). Mortgages, ¶330.

The provision of G. S. 1913 § 6646, authorizing the court, in proceedings for collection of an assessment against stockholders of an insolvent corporation, to receive evidence by

affidavit or otherwise, is not unconstitutional as depriving stockholders of property without due process of law (132-9, 155+754). Corporations, ¶269(2).

The provision of G. S. 1913 § 8723, as to giving of bond in order to resume the use of property under the abatement law, is not invalid as a denial of due process of law (131-308, 155+90). Constitutional Law, ¶278(1), 324; Nuisance, ¶60.

Effect of decisions of United States supreme court as to due process of law (129-204, 151+917, L. R. A. 1916E, 232, Ann. Cas. 1916E, 335).

G. S. 1913 §§ 8717-8726, held not invalid as an unreasonable exercise of the police power with respect to personal property used in the maintenance of a disorderly house (126-78, 147+951, 52 L. R. A. [N. S.] 932, Ann. Cas. 1915D, 549). Nuisance, ¶60.

G. S. 1913 §§ 4268-4271, requiring railroad companies to keep ditches open, is not invalid as an invasion of the property rights of the company (132-265, 156+121). Railroads, ¶108; Waters and Water Courses, ¶119(4).

§ 8. Remedies for wrongs—

The provision of G. S. 1913 § 8723, as to giving of bond in order to resume the use of property under the abatement law, is not violative of the provision that justice shall be obtained freely and without purchase (131-308, 155+90). Constitutional Law, ¶278(1), 324; Nuisance, ¶60.

G. S. 1913 § 8723, relating to the right of an owner of premises to obtain release from a decree of abatement by giving bond and paying costs, is unnecessarily drastic (126-95, 147+953).

The workmen's compensation act held not to violate this section (126-286, 148+71, L. R. A. 1916D, 412). Master and Servant, ¶347.

§ 10. Unreasonable searches and seizures—

A description of the place to be searched meets the requirements, where it furnishes data from which the officer is enabled to definitely locate the place. The description in this case held sufficient (132-260, 156+130). Searches and Seizures, ¶3.

A search warrant fair on its face protects the officer, though the complaint on which it was based is insufficient (132-260, 156+130). Sheriffs and Constables, ¶98(1).

§ 11. Attainder—Ex post facto laws—Impairment of contracts—

G. S. 1913 §§ 8717-8726, providing for abatement of disorderly houses by suit in equity, held not violative of this section, as being a bill of attainder and ex post facto law (126-95, 147+953). Constitutional Law, ¶197.

G. S. 1913 §§ 7036, 7037, in giving one transporting and storing property at the request of the owner a lien superior to a chattel mortgage, does not impair the obligation of the mortgage contract (124-144, 144+750). Constitutional Law, ¶161.

1913 c. 587 (§ 5541), does not impair contracts let for drainage work prior to the passage of the act, since such contracts are subject to the control of the legislature, the county being a mere state agency in conducting the drainage proceedings (123-59, 142+945). Constitutional Law, ¶121(2).

The inheritance tax law, as amended by 1911 c. 209, is not unconstitutional as impairing the obligation of contracts (128-371, 150+1094, L. R. A. 1916A, 901). Constitutional Law, ¶119.

The workmen's compensation act does not impair the obligation of contracts of employment existing at the time of the enactment of the statute (128-221, 150+623). Constitutional Law, ¶146.

§ 12. Imprisonment for debt—Exemption from execution—

1915 c. 105, making it larceny for a contractor to misuse, with intent to defraud, money paid to him by the landowner for improvements under G. S. § 7020, is not invalid as involving imprisonment for debt (134-35, 158+829). Constitutional Law, ¶83(3).

A person who furnishes material for the construction of a building on a homestead has no claim or lien on money constituting proceeds of insurance on the building after its destruction by fire (132-372, 157+504). Homestead, ¶79.

Exception of debt incurred for labor from exemption right cited in (161+413). Descent and Distribution, ¶140. See note under G. S. § 8182.

§ 13. Private property for public use—

Property damaged—Under this section, as amended in 1896, a property owner may recover for special pecuniary damage to private property through the construction and operation of a railroad, though the damage is consequential and results from structures or operations that do not invade his land; but the right of recovery is based on the existence of an actionable wrong at common law, and if a railroad erects a structure which constitutes a private nuisance as to property in the neighborhood, the owner thereof may recover, though the instrumentality causing the injury is not a public nuisance, and is reasonable and necessary from a public standpoint, is not negligently constructed, and is authorized by statute (161+501). Eminent Domain, ¶90.

Damaging private property abutting upon a highway by constructing an embankment in the highway is an invasion of the rights of the owner, for which this section requires compensation (130-359, 153+738). Eminent Domain, ¶90.

Under this section a city is liable for damages caused by change of grade of a street (123-300, 143+906). Eminent Domain, ¶101(1).

If the operation of a railroad in the ordinary manner creates a private nuisance upon adjacent property, such property is thereby damaged within the purview of this section (125-224, 146+353, 51 L. R. A. [N. S.] 1017). Eminent Domain, ¶104.

The construction of a commercial railroad across a street in front of a lot imposes an additional servitude for which the property owner is entitled to compensation (206 Fed. 122, 127 C. C. A. 89). Eminent Domain, ¶119.

Where the property itself is not taken, but merely damaged, the right of the owner to go into court and compel the municipality which invades his rights to make compensation satisfies the requirement of this section (130-359, 153+738). Eminent Domain, ¶271.

The obligation to pay consequential damages to property not taken rests upon the political division of the state which invades the right of property, where the legislature has made no other provision; and where a county, under G. S. 1913 §§ 2584-2586, constructs a bridge, in building which abutting property is damaged, the duty to make compensation was on the county and not the village in which the bridge was located (130-359, 153+738). Eminent Domain, ¶285.

Riparian owner, in front of whose property a railroad company places a fender to direct navigation under its bridge, held not entitled to compensation, the work being authorized by the federal government (125-380, 147+431). Navigable Waters, ¶39(5).

Under this section an abutting owner is entitled to recover damages arising to his property from the improvement of the street, such as removal of lateral support, depression of the street below grade, and prevention of access (129-59, 151+532). Municipal Corporations, ¶385(4).

Taking private property without compensation—The power of eminent domain defined (125-194, 145+967). Eminent Domain, ¶4.

St. Paul City Charter § 251, making compensation awarded a public charge recoverable by the property owner, held not violative of this section (128-432, 151+144). Eminent Domain, ¶70.

St. Paul City Charter tit. 3 c. 6 §§ 7, 23, as amended, relating to assessments for local improvements, held not violative of this section because permitting an enforcement of the assessments without a sale of the property, redemption being permitted (123-1, 142+886). Constitutional Law, ¶200(7).

G. S. 1913 §§ 2820, 2823, imposing liability on one school district for tuition of pupils attending a special school for training in agriculture and domestic science maintained in another district, is not violative of this section (122-254, 142+325, 47 L. R. A. [N. S.] 200). Constitutional Law, ¶278(1).

Necessity of condemnation is not subject to judicial review (121-376, 141+801).

An ordinance of a city establishing a residential district, and prohibiting the erection therein of certain business establishments, including stores, held, as applied to one who had erected a store building under a permit duly issued, and who applied for a permit to install therein an electric lighting system as required by ordinance, invalid, as taking property without compensation, such ordinance not being within the police power of the city to restrict the erection of building injurious to the public welfare (134-226, 158+1017). Constitutional Law, ¶278(1); Eminent Domain, ¶2(1); Municipal Corporations, ¶625.

A city is without power to condemn land, ostensibly for an alley, but with the intention to turn over the land to a private person for the construction of a switch track to his land; and the truth of the declaration in the petition that the land is sought to be acquired for an alley may be inquired into by the court (133-221, 158+240). Eminent Domain, ¶13, 57, 66, 67.

An abutting owner may enjoin the operation and maintenance of a commercial railroad on the street, which has been constructed without having obtained the right by condemnation or otherwise to occupy the street (131-183, 154+948). Eminent Domain, ¶276.

One injured in his private rights by commercial railroad's use of public street, as is the owner of fee of street, is entitled to relief against such use (162+453). Municipal Corporations, ¶671(10).

Failure to name the owner of an interest in land in the plat and notices under G. S. 1913 § 1567, in proceedings to condemn land for the widening of a street, held not a taking of property without compensation, in view of the provision of the statute that the names of owners shall be stated "so far as they can readily be ascertained" (161+231). Constitutional Law, ¶281; Eminent Domain, ¶167(2).

A resolution of a municipal council to take property for an alley has no validity in absence of an assessment of compensation (135-436, 161+154).

The workmen's compensation act does not violate this section (126-286, 148+71, L. R. A. 1916D, 412). Constitutional Law, ¶208(7).

Measure of damages—Measure of damages for taking part of leasehold premises, removal of front wall which landlord is not required by lease to rebuild, and where lease is terminable on 60 days' notice and payment of a specified sum, stated (see 135-389, 160+1021). Eminent Domain, ¶147.

ARTICLE 2

NAME AND BOUNDARIES

§ 3. Acceptance of enabling act—

In view of this section, land, title to which is in the United States, cannot be registered under the Torrens act (130-456, 153+871). Courts, ¶489(5); Records, ¶9(1, 4, 13).

SUPP.G.S.MINN.'17-53

ARTICLE 3

DISTRIBUTION OF THE POWERS OF THE GOVERNMENT

§ 1. Departments of the government—

Legislative questions—Necessity of exercise of power of eminent domain is a legislative and not a judicial question (121-376, 141+801). Eminent Domain, ¶88.

An ordinance relating to a purely legislative matter cannot be made the subject of a suit to restrain its enforcement (131-424, 155+397). Injunction, ¶85(1).

The question of the necessity or propriety of an order of the county board in changing the boundaries of a school district under G. S. 1913 § 2677, is legislative and not judicial (135-439, 161+152). Constitutional Law, ¶70(1).

The provision of G. S. 1913 § 3142, forbidding the sale of intoxicating liquors within one-half mile of a town or municipality which has voted no license, is constitutional (126-5, 147+660). Intoxicating Liquors, ¶14.

A determination of the legislature that a sufficient distinction existed between two classes of persons to apply different rules concerning them is binding upon the courts, unless the distinction is purely fanciful and arbitrary (126-286, 148+71, L. R. A. 1916D, 412). Constitutional Law, ¶7.

The courts will not interfere with the discretion vested in the county board by G. S. 1913 § 2696, in dividing the school funds between an old district and a new district created therefrom (126-209, 148+53). Schools and School Districts, ¶41(1).

What accommodations are reasonably necessary is legislative and administrative, and not judicial, and the courts can interfere only where the exercise of the power oversteps constitutional or other limitations (124-533, 144+771). Railroads, ¶9(2).

The function of the railroad and warehouse commission in ordering the construction of a suitable depot at a village or city is legislative or administrative, but the reasonableness of such an order is a judicial question (135-19, 159+1089). Railroads, ¶9(2).

1913 c. 567 § 5541, held not invalid, in so far as it affects contracts entered into before the statute was enacted, on the ground that the provision as to payment of compensation is unwise and does not subserve a public purpose; the question of the wisdom and propriety of the provision being solely for the legislative determination (123-59, 142+945). Constitutional Law, ¶103, 121(2).

Whether charitable associations are to be excluded from the requirement as to guarding dangerous machinery is for the legislature and not the courts to determine (122-10, 141+837, 46 L. R. A. [N. S.] 548). Charities, ¶45(2).

Construction favoring validity—Where a law is within constitutional limitations it cannot be said to be against public policy (124-300, 145+21). Constitutional Law, ¶38.

Rule requiring that statutes be so construed as to be consistent with constitutional limitations, if possible, applies to home rule city charters (129-40, 151+545, Ann. Cas. 1916B, 189). Constitutional Law, ¶48.

In the enactment of statutes the legislature is presumed to intend to keep within constitutional bounds, and unless the statute is unconstitutional beyond a reasonable doubt it must be sustained (126-95, 147+953). Constitutional Law, ¶48.

Statutes are presumed to be valid, unless they clearly transgress some constitutional limitation (126-286, 148+71, L. R. A. 1916D, 412). Constitutional Law, ¶48.

While the courts are not bound by the legislative determination of what is a reasonable license fee, they will not hold a legislative act invalid, unless it is clear that it infringes some right guaranteed by the constitution (124-498, 145+383, 51 L. R. A. [N. S.] 40, Ann. Cas. 1915B, 812). Licenses, ¶7(9).

Policy or wisdom of legislation—The wisdom of the workmen's compensation act is for the determination of the legislature, not of the courts (128-158, 150+620). Constitutional Law, ¶70(3).

The courts have no concern with the wisdom of a provision of the Duluth city charter relating to preferential ballot (125-407, 147+815, L. R. A. 1915B, 401). Constitutional Law, ¶70(3).

The courts cannot question the wisdom of G. S. 1913 § 1340, providing that the classification of cities shall be determined by the state census alone (124-126, 144+756). Constitutional Law, ¶70(3).

Executive questions—The courts will not on habeas corpus review the action of the governor in granting a warrant in extradition proceedings (126-38, 147+708). Habeas Corpus, ¶92(2).

G. S. 1913 §§ 6083-6088, authorizing the county board or county auditor to license any voter in the county as an auctioneer, is not invalid as delegating legislative powers to the officers named (127-150, 149+9, L. R. A. 1915B, 151). Constitutional Law, ¶63(3).

The acts creating the tax commission and conferring on it certain powers are not invalid as a delegation of legislative power (121-421, 141+839). Constitutional Law, ¶80.

1915 c. 367, amending G. S. 1913 § 4353, is not violative of this section, in that it delegates legislative power to the railroad and warehouse commission (134-217, 158+982). Carriers, ¶2; Constitutional Law, ¶62.

The discretion of the mayor of a city to revoke licenses is not subject to judicial control, except that a court may inquire as to whether a fair legal discretion has been exercised (131-195, 154+964, L. R. A. 1916C, 224). Theaters and Shows, ¶3.

What is judicial power and what are judicial questions—Judicial power is vested alone in the courts, and consists in the adjudication of the rights of persons or property, and to that end declares, construes, and applies the law. The action of a town board in granting or withholding permits to operate trades or employments in which noisome odors may arise is not judicial, but is an exercise of the police power of the state. The proceedings of a license board in such cases is, however, quasi judicial (130-474, 153+869). Constitutional Law, ¶67.

It is not for the court to make statutory law, but to construe and enforce it as it finds it (125-174, 145+1075, Ann. Cas. 1915C, 749). Constitutional Law, ¶70(1).

Whether railroad rates fixed by statute are reasonable or unreasonable and confiscatory is a judicial question, exclusively for the determination of the courts (130-144, 153+320, L. R. A. 1916B, 764). Carriers, ¶18(1).

While in a proper action the reasonableness of an established rate may be the subject of judicial investigation and adjudication, courts are without authority to fix by injunction, or otherwise, rates for public service corporations (130-71, 153+262, Ann. Cas. 1916B, 286). Constitutional Law, ¶70(3).

Whether an order of the railroad and warehouse commission is reasonable is a judicial question (130-57, 153+247). Constitutional Law, ¶73.

In the exercise of the power of eminent domain, the only questions for the determination of the courts are whether the use is a public one, and whether proper compensation is given (125-194, 145+967). Eminent Domain, ¶66.

Inconsistencies arising from the application of the inheritance tax law, not affecting its constitutionality, do not call for action by the courts to remove such inconsistencies (124-508, 145+390, 50 L. R. A. [N. S.] 262, Ann. Cas. 1915B, 861). Taxation, ¶858.

Whether the purpose for which private property is to be taken is a public one is a judicial question, which may be determined by the courts (125-403, 147+273). Eminent Domain, ¶66.

The courts cannot interfere with the legislative discretion in the formation of senatorial and representative districts, except when there has been a clear and arbitrary departure from the requirements of equality (125-336, 147+105). States, ¶27.

Under the statutes relating to public service corporations it is the duty of the court to determine in each particular case whether the taking of designated property is necessary and whether such property may lawfully be taken for the purpose (127-23, 148+561). Eminent Domain, ¶66.

The workmen's compensation act is not violative of this section, in that it encroaches on the judiciary (128-221, 150+623). Constitutional Law, ¶78.

The Elwell road law (G. S. 1913 §§ 2603-2609) is not unconstitutional, as conferring legislative powers on the judiciary (129-165, 151+899). Constitutional Law, ¶61.

G. S. 1913 § 7998, forbidding the direction of a verdict over the objection of the adverse party, is not violative of the constitutional authority of the courts to determine whether a cause of action or defense exists, but merely regulates the exercise of the power (129-4, 151+412). Trial, ¶171.

1911 c. 207 (G. S. 1913 § 2688), relating to proceeding for the consolidation of school districts and to appeals therein, is not violative of this section as an attempt to confer upon the courts questions of a purely legislative character (122-383, 142+723). Constitutional Law, ¶61.

While the necessity and propriety of condemning land for a public purpose is a legislative question, the courts have power to inquire as to the intended use to be made of land which a city is seeking to condemn ostensibly for a public alley; and if the evidence clearly shows that the city intends to devote the land to a private purpose, its petition for condemnation will be denied (133-221, 158+240). Eminent Domain, ¶66.

The drainage act of 1909 (G. S. 1913 §§ 5523, 5525, 5553), conferring jurisdiction on the district court to entertain a proceeding to establish a ditch located wholly within one county, and not benefiting or damaging land in an adjoining county, is not unconstitutional, as conferring legislative and executive powers on the court (131-43, 154+617). Constitutional Law, ¶70(1), 74; Drains, ¶26.

Powers that may be delegated by the legislature—Power to make regulations as to use of general standard of weights and measures fixed by legislature may be delegated (121-202, 141+106, Ann. Cas. 1914C, 678). Constitutional Law, ¶60.

ARTICLE 4

THE LEGISLATIVE DEPARTMENT

§ 2. Number of members—

This section does not require that each district shall contain the same number of inhabitants, the legislature being vested with a wide discretion in forming such districts, and a mere variance in population does not render the apportionment unconstitutional (125-336, 147+105). States, ¶27.

§ 9. Members not to hold certain offices—

Members of the legislature which enacted 1913 c. 400 (G. S. 1913 §§ 294-297), are not prohibited by this section from becoming candidates for nomination for state auditor at the

ensuing primary election; there being no increase made by that law in the compensation of the office at the time the act took effect (125-104, 145+794). Officers, [§29](#).

§ 10. Revenue bills to originate in the house—

The penalty imposed by the abatement law (G. S. 1913 § 8724) is not a tax, the bill for imposition of which must originate in the house (131-308, 155+90). Statutes, [§6](#).

§ 15. Exclusion of convicts from civil rights—

This section does not forbid the legislature from providing that a violation of any provision of the corrupt practices act shall bar a candidate from holding an office to which he is elected (126-378, 148+293). Elections, [§270](#).

§ 20. Reading bills—

No particular formality is required to dispense with the requirement as to readings; and action of the house, the necessary effect of which was to order a third reading of the bill on the same day that it had been read a second time, and to place it on its final passage, and the passage of the bill by a vote of more than two-thirds of all the members of the house, operated to dispense with the rule. "Two-thirds of the house," as used in this section, means two-thirds of the whole membership of the house. The provision as to dispensing with the reading of a bill on three different days is mandatory, and an act passed without the required readings on different days, and without dispensing with the rule, is invalid (130-424, 153+749). Statutes, [§15](#).

Presumption as to compliance with requirement as to readings (see 130-424, 153+749). Statutes, [§285](#), 286. See, also, notes under Const. art. 4 § 21, and G. S. 1913 §§ 41, 8414.

§ 21. Enrolling and signing bills—

The fact that a bill was enrolled, authenticated by the presiding officers of each house, signed by the governor, and filed with the secretary of state is not conclusive that it was passed in a constitutional manner, but the courts may look to the legislative journals to ascertain that fact. The presumption arising from such enrollment, etc., is a strong one, requiring clear and strong evidence to overcome it. Mere silence of the journals is not sufficient to overcome the presumption, but it must affirmatively appear on the face of the journal that some constitutional requirement was not followed. And where the daily printed journal is silent on the subject, and the permanent journal shows an adverse vote on a combined motion to suspend the constitutional requirement as to readings of bills and also certain rules of the house, made before necessity had arisen for suspension of the constitutional requirement as to the particular bill in question, there was no affirmative showing that such requirement had not been complied with when the occasion did arise (130-424, 153+749). Statutes, [§37](#), 286.

Relative weight as evidence of printed daily journal and permanent journal (see 130-424, 153+749). Statutes, [§285](#), 286. See, also, notes under G. S. 1913 §§ 41, 8414.

§ 23. Census—Apportionment—

This section imposes a duty upon the legislature to make a reapportionment, and, if not made at the first session after the census, it may make the reapportionment at some subsequent session (125-336, 147+105). States, [§27](#).

§ 27. Laws to embrace but one subject—

Construction in general—This provision is to be construed liberally, and all doubts resolved in favor of the sufficiency of this title (124-307, 144+962). Statutes, [§105](#)(1).

A law is not invalid because its scope is not as broad or all-inclusive as its title indicates (135-89, 160+204). Statutes, [§126](#).

Specific statutes—1905 c. 204 (G. S. 1913 § 5258 et seq.) is not violative of this section (128-300, 150+912). Statutes, [§117](#)(1).

That penal provisions of G. L. 1909 c. 201 (4624-4635) are not expressed in its title does not render the act unconstitutional (121-381, 141+526). Statutes, [§109](#).

The title of 1909 c. 503 (G. S. 1913 § 6863) does not so limit or restrict the act as to exclude the subject of vacation of plats or streets (129-306, 152+643). Statutes, [§123](#)(4).

1911 c. 156 (G. S. 1913 §§ 4611-4623), establishing a department of weights and measures, does not violate this section (124-307, 144+962). Statutes, [§118](#)(1).

The inheritance tax law as amended by 1911 c. 209, is not violative of this section (128-371, 150+1094, L. R. A. 1916A, 901). Statutes, [§121](#)(4).

Title to 1911 c. 250 held sufficient (124-136, 144+748). Statutes, [§110½](#)(1).

1913 c. 140 (G. S. 1913 §§ 48, 49) is not violative of this section, in that its subject-matter is not expressed in its title (126-110, 147+946). Statutes, [§119](#)(3).

1913 c. 389 (G. S. 1913 § 336) is not violative of this section, as embracing more than one subject (125-238, 146+364). Statutes, [§107](#)(5).

1913 c. 389 (G. S. 1913 § 336) is not violative of this section, in that its subject-matter is not germane to the statutes amended (125-238, 146+364). Statutes, [§131](#).

1913 c. 389, § 2 (G. S. 1913 § 336), amending certain sections of R. L. 1905, as the same were amended by subsequent session laws, and repealing certain session laws, the subject-matter of all such laws being primary elections, which chapter refers in its title to the sections amended by number only, without reciting in its own title the general subject of the legislation, is not violative of this section (125-238, 146+364). Statutes, [§125](#)(5).

G. S. 1913 §§ 3136, 3137, held not violative of this section (126-68, 147+829). Statutes, [§118](#)(1).

§ 32a. Submission of laws for taxation of railroads—

Cited (125-407, 147+815, L. R. A. 1915B, 401).

Cited (131-287, 155+92) on the proposition as to whether illegally marked ballots are to be counted in determining whether a majority of the votes cast have favored the measure submitted. *Intoxicating Liquors*, §35.

§ 33. Special legislation prohibited—

In general—This section does not deprive the legislature of power to classify districts of the state for purposes of legislation, if the basis of the classification is germane to the purpose of the law (124-126, 144+756). Statutes, §92.

The word "modify," as used in this section, is synonymous with "enlarge" and "extend," and a statute which removes or takes from a special statute a distinct and severable part is not a modification thereof (133-178, 158+50). Statutes, §134.

The amendment adopted November 8, 1881, did not operate on a franchise granted after that date, but before the amendment took effect in January following (128-314, 150+917).

Laws passed prior to amendment of 1892—Sp. L. 1891 c. 423 took effect prior to the amendment of this section (133-178, 158+50). Statutes, §102(2).

1903 c. 294, was a repeal in part of the special law, but was not a modification thereof, within the meaning of this section (133-178, 158+50). Statutes, §140.

1911 c. 250 § 4, providing for compensation of clerks of the district court of certain counties, held not to extend or amend Sp. L. 1891 c. 423, fixing the compensation of the clerk of the district court of Otter Tail county (124-136, 144+748). Statutes, §134.

Matters subsequent to amendment of 1892—The classification in 1911 c. 250 §§ 4, 5, held not arbitrary or unreasonable (124-136, 144+748). Statutes, §93(10).

1913 c. 257, relating to the construction of a railway for the use of the University of Minnesota, is not unconstitutional as special legislation (125-194, 145+967). Statutes, §97(1).

1913 c. 389 (G. S. 1913 § 336), relating to primary elections, is not violative of this section, as special or class legislation (125-238, 146+304). Statutes, §101(2).

1913 c. 567 (§ 5541), relating to payment of compensation on drainage contracts, held, not violative of this section on the ground that the classification made by such act is arbitrary (123-59, 142+945). Statutes, §97(3).

G. S. 1913 § 3191, making it unlawful to sell liquors to minors, held not unconstitutional as special legislation, in that a general law can be made applicable (124-162, 144+752, Ann. Cas. 1915B, 377). Statutes, §76(5).

G. S. 1913 § 8901 is not violative of this section, as being class legislation, though the act is aimed at those only who make or use false statements to obtain credit from banks, savings banks, and trust companies (135-89, 160+204). Constitutional Law, §208(1).

North Dakota act, imposing on "every common carrier" liability "to any of its employes" for injuries, held not violative of N. D. Const. N. D. art. 1 § 11, providing that all laws of general nature shall have uniform operation, and § 20, prohibiting class legislation (121-431, 141+806).

§ 34. General laws—

124-136, 144+748.

§ 36. Cities and villages may adopt charters—Classification of cities for legislative purposes—

Cited (125-407, 147+815, L. R. A. 1915B, 401).

Home rule charter provision cited (129-240, 152+408).

Election—The six months within which a proposed home rule charter shall be submitted to the mayor extends from a date earlier than the date of appointment of the last member of the charter commission (129-181, 151+970). Municipal Corporations, §48(1).

Cited (131-287, 155+92) on the proposition as to whether illegally marked ballots are to be counted in determining whether a majority of the votes cast have favored the measure submitted. *Intoxicating Liquors*, §35.

Mandamus to compel calling of election for submission of home rule charter returned by charter commission (129-181, 151+970). Mandamus, §74(2).

Newspaper duly designated for the publication of official notices held a newspaper of "general circulation" within the meaning of this section (123-1, 142+886). Newspapers, §3(1).

Classification—The legislature has power to provide that, for the purposes of classification of cities, population shall be determined by the state census alone. The power of the legislature to fix the test by which the classification of cities according to population shall be determined implies the power to change that test, though such change may result in shifting cities from one class to another. The legislature has no power to adopt a test which is arbitrary and evasive of the constitution. But it cannot be said that G. S. 1913 § 1340 is thus arbitrary and evasive (124-126, 144+756). Statutes, §92.

1909 c. 503 (G. S. 1913 § 6863) held not invalid, as making an arbitrary classification of municipalities, in that it excepts cities of the first class having a special charter from its operation, for, irrespective of the proviso, such cities would not have their special charters repealed or affected by implication (129-305, 152+643). Statutes, §93(4).

Powers under charter—The requirement that the charter shall provide a legislative body for the city is not violated by conferring the power of the initiative and referendum upon the electors of the city after establishing such legislative body (134-355, 159+792). Municipal Corporations, §108.

The adoption of a home rule charter by the people of a city is legislation, and the authority which it furnishes to city officers is legislative authority (134-296, 159+627). Municipal Corporations, ¶48(2).

The powers which cities may take to themselves by virtue of home rule charters are subject to the paramount power of the legislature, and may be suspended or abrogated whenever the legislature sees fit to exercise its reserved power. The county option law (1915 c. 23), as to cities operating under home rule charters, does not infringe the rights granted by this section (132-298, 156+249). Intoxicating Liquors, ¶14.

The provisions relative to home rule charters do not authorize a city to grant its city council the right to punish a witness called before it for contempt, as such power cannot be inferred (131-116, 154+750). Municipal Corporations, ¶60.

The provisions of the St. Paul commission charter directing the mayor to designate one of the councilmen as commissioner of education, to have supervision of the schools and libraries of the city, is not violative of this section (128-82, 150+389). Schools and School Districts, ¶10.

St. Paul City Charter tit. 3 c. 6 §§ 7, 23, relating to assessments for local improvements, are not violative of this section (123-1, 142+886). Municipal Corporations, ¶407(2).

ARTICLE 5

THE EXECUTIVE DEPARTMENT

§ 4. Powers and duties of governor—

There being a vacancy in the office of municipal judge, because of an unconstitutional statute, the governor was authorized to make an appointment (131-401, 155+629). Judges, ¶8.

ARTICLE 6

THE JUDICIARY

§ 1. Courts—

Cited (133-124, 158+234).

The municipal court is a state court within the meaning of this section (130-492, 153+963, L. R. A. 1916B, 931). Courts, ¶42(5).

§ 2. Supreme court—

G. S. 1913 § 357, conferring original jurisdiction on the supreme court to review the action of canvassing boards and election officers, is valid as a grant of jurisdiction in one of the remedial cases permitted by this section (125-249, 146+733). Courts, ¶206.

§ 6. Judges of supreme and district courts—Qualifications—Compensation—

A layman is not entitled to have his name placed on the primary ballot as candidate for district judge, though he has filed with the secretary of state an affidavit under G. S. 1913 § 339, and paid the requisite fee (125-533, 147+425). Judges, ¶4.

§ 7. Probate courts—

Cited (130-240, 153+520).

Jurisdiction of probate court—The jurisdiction of the probate courts is entire, exclusive, and plenary, and the court has fully equity powers necessary to the settlement and distribution of an estate, and it may apply the law to the facts, whether the law be statutory, common law, or the principles of equity (133-124, 158+234). Courts, ¶200¼.

Where the person alleged to be deceased is in fact dead and in fact left an estate within the probate court's territorial jurisdiction, it had jurisdiction over the subject-matter of administering such estate (162+454). Executors and Administrators, ¶9.

The administration of the estate of a deceased person is a proceeding in rem (162+454). Executors and Administrators, ¶20(1).

G. S. 1913 §§ 7416, 8175, do not take away from the probate court jurisdiction and control over matters pertaining to a fund resulting from the statutory liability for wrongful death (123-165, 143+255). Courts, ¶199.

The probate court has exclusive jurisdiction of the settling of accounts of administrators, and to correct errors in its orders settling such accounts, or to set them aside for mistake or fraud (126-445, 148+302). Courts, ¶472(4).

Jurisdiction to determine heirship and descent of allotment on White Earth Indian reservation, where allottee dies before approval of his allotment (130-487, 153+961). Courts, ¶489(5).

— **How invoked**—The jurisdiction of the probate court conferred by this section must be invoked by petition as required by G. S. 1913, § 7227 (128-112, 150+385). Executors and Administrators, ¶22(3), 29(1).

Term—1915 c. 168, providing that clerks of district court, elected in 1912, shall hold over until January, 1919, and that their successors shall be elected in November, 1918, held to create a vacancy commencing in January, 1918, in view of art. 6 § 13, and art. 7 § 9 (132-426, 157+652). Clerks of Courts, ¶7.

§ 9. Election of other judges—

Cited (130-492, 153+953, L. R. A. 1916B, 931; 132-426, 157+652).

Under this provision, by virtue of which the municipal court of Duluth is created, the office of municipal judge is elective, and the term of office, fixed by the legislature, cannot exceed seven years. A hold-over provision in a statute, the effect of which may prolong the incumbent's term beyond the seven years, may be valid for the constitutional term. This provision does not prevent the legislature from extending a fixed term of office by a provision that the incumbent shall continue in office until his successor is duly elected and qualified, if the necessary effect of the statute does not prolong the term beyond the seven years. If a statute has that effect it is unconstitutional (131-401, 155+629). Judges, ¶7, 9.

§ 10. Vacancies—

A successor to one appointed municipal judge should be elected at the next general election, and a statute providing otherwise is unconstitutional (131-401, 155+629). Judges, ¶8.

Where, at the expiration of the time for filing nominations for district judge at the primary election in June, there were but two vacancies, but subsequent to that date another vacancy was created by resignation, it was the duty of the county auditor to prepare the primary election ballot so as to indicate that there were three vacancies to be filled at the November election (126-525, 147+426). Elections, ¶126(5).

§ 13. Clerk of district court—

Cited (131-401, 155+629).

1915 c. 168, amending G. S. 1913 §§ 809, 810, by providing that clerks of the district court, elected in 1912, shall hold over to the first Monday in January, 1919, and that their successors shall be elected in November, 1918, thus extending the terms of present incumbents, and creating a vacancy to be filled by appointment is violative of this section and art. 7 § 9 (132-426, 157+652). Clerks of Courts, ¶3, 7.

§ 14. Pleadings—Process—Conclusion of indictments—

Cited on question of meaning of word "process" (132-389, 157+642). Holidays, ¶5.

§ 15. Court commissioners—

A court commissioner is without power to vacate a judgment rendered by the district court, and an order made by him purporting to do so is a nullity (131-129, 154+748). Court Commissioners, ¶4.

ARTICLE 7**ELECTIVE FRANCHISE****§ 1. Persons entitled to vote—**

Cited (132-48, 155+1064).

The legislature may prescribe such safeguards in respect to the right to vote as are reasonably necessary to prevent fraud, to limit the election to those possessing the requisite qualifications, and to insure a free and explicit expression of the will of the voter; but, where good faith is shown, mere failure to comply with statutory regulations, unless such regulations are declared mandatory, will not invalidate the ballots (125-417, 147+275). Elections, ¶118.

The preferential system of voting provided by the Duluth charter, whereby first choice, second choice, and additional choice votes are permitted, and are counted in a manner therein provided, is violative of this section. The term "vote," as used in this section, means a choice for a candidate by one constitutionally qualified to exercise a choice. It does not mean that the ballot of one elector, cast for one candidate, can be of greater or less effect than the ballot of another elector cast for another candidate (130-492, 153+953, L. R. A. 1916B, 931). Elections, ¶15.

The provisions of the Duluth city charter, relating to a preferential ballot, by which the voter can indicate a first, second, and additional choice, held not in conflict with this section (125-407, 147+815, L. R. A. 1915B, 401). Elections, ¶27.

§ 2. Persons not entitled to vote—

This section does not forbid the legislature from providing that a violation of any provision of the corrupt practices act shall bar a candidate from holding an office to which he is elected (126-378, 148+293). Elections, ¶270.

§ 6. Elections to be by ballot—

The preferential system of voting provided by the Duluth charter, whereby first choice, second choice, and additional choice votes are permitted, and are counted in a manner therein provided, is violative of this section (130-492, 153+953, L. R. A. 1916B, 931). Elections, ¶15.

§ 7. Eligibility to office—

125-104, 145+794; note under art. 4 § 9.

The corrupt practices act is not violative of this section, in that it authorizes the exclusion of a person from office for corrupt practices in the election thus adding qualifications of eligibility to office not warranted by this provision (126-378, 148+293). Elections, ¶270.

§ 8. Women—

The provision of the St. Paul commission charter that the mayor shall designate one of the members of the council, elected by the male voters of the city, as commissioner of education, with charge over the schools and libraries of the city, is not violative of this section (128-82, 150+389). Elections, ~~§~~13.

§ 9. Official year—Terms of office—General elections—

Plaintiff claims to have held over in the office of municipal judge of the city of Duluth after the expiration of his term. The statute (1913 c. 102) creating the office contained no valid hold-over provision (162+1075). Judges, ~~§~~9.

G. S. 1913 §§ 809, 810, fixing the terms of certain county officers, and operating prospectively, is not violative of this section, in view of art. 11 § 4 (133-66, 157+907). Counties, ~~§~~65.

1915 c. 168, amending G. S. 1913 §§ 809, 810 by providing that clerks of the district court elected in 1912 shall hold over to the first Monday in January, 1919, and that their successors shall be elected in November, 1918, thus extending the term of present incumbents, and creating a vacancy commencing in January, 1917, is violative of this section and of art. 6 § 13 (132-426, 157+652). Clerks of Courts, ~~§~~37.

The provision of this section fixing the official year does not affect the provision in the municipal court act as to holding over by the judge of that court (131-401, 155+629). Judges, ~~§~~9.

Where a county superintendent of schools was defeated for re-election, and unsuccessfully contested the election on the ground that her opponent had violated the corrupt practices act, and then surrendered the office, and the contestee qualified and assumed the duties of the office, but was thereafter ousted on appeal, and resigned, there was a vacancy in the office; contestant's right to the office having expired under this section (131-1, 154+442). Schools and School Districts, ~~§~~48(3).

ARTICLE 8**SCHOOL FUNDS, EDUCATION AND SCIENCE****§ 1. Uniform system of public schools—**

The legislature has the power to establish in local communities schools teaching other than the common branches, such as special training in agriculture and domestic science (122-254, 142+325, 47 L. R. A. [N. S.] 200). Schools and School Districts, ~~§~~9.

This provision, construed with § 3, requiring the legislature to make provisions for raising funds for school purposes, is mandatory, and not a mere grant of power (122-254, 142+325, 47 L. R. A. [N. S.] 200). Schools and School Districts, ~~§~~10.

The St. Paul commission government charter, in providing that one of the six commissioners elected shall be designated by the mayor as commissioner of education, is not violative of this section as introducing nonuniformity in the state educational system (128-82, 150+389). Schools and School Districts, ~~§~~10.

§ 2. School and swamp lands—School funds from sale of—Revolving fund—The proceeds of such lands as are or hereafter may be granted by the United States for the use of schools within each township in this state shall remain a perpetual school fund to the state; and not more than one-third of said lands may be sold in two years, one-third in five years, and one-third in ten years; but the lands of the greatest valuation shall be sold first: Provided, that no portion of said lands shall be sold otherwise than at public sale. The principal of all funds arising from sales or other disposition of lands or other property, granted or intrusted to this state in each township for educational purposes, shall forever be preserved inviolate and undiminished; and the income arising from the lease or sale of said school land shall be distributed to the different townships throughout the state, in proportion to the number of scholars in each township, between the ages of five and twenty-one years; and shall be faithfully applied to the specific objects of the original grants or appropriations. Suitable laws shall be enacted by the legislature for the safe investment of the principal of all funds which have heretofore arisen or which may hereafter arise from the sale or other disposition of such lands, or the income from such lands accruing in any way before the sale or disposition thereof, in interest-bearing bonds of the United States, or of the state of Minnesota issued after the year 1860, or of such other state as the legislature may by law from time to time direct. All swamp lands now held by the state, or that may hereafter accrue to the state, shall be appraised and sold in the same manner and by the same officers, and the minimum price shall be the same less one-third, as is provided by law for the appraisal and sale of the school lands under the provisions of title one

of chapter thirty-eight of the General Statutes. The principal of all funds derived from sales of swamp lands as aforesaid shall forever be preserved inviolate and undiminished. One-half of the proceeds of said principal shall be appropriated to the common school fund of the state; the remaining one-half shall be appropriated to the educational and charitable institutions of the state in the relative ratio of cost to support said institutions.

A revolving fund of not over two hundred fifty thousand dollars (\$250,000) may be set apart from the fund derived from the sale of school and swamp lands, to be used in constructing roads, ditches and fire breaks in, through and around unsold school and swamp lands and in clearing such lands, such fund to be replenished as long as needed from the enhanced value realized from the sale of such lands so benefited.

As amended November 2, 1875, November 8, 1881, and November 7, 1916.

Rights acquired by school district in condemnation proceedings for the appropriation of state land are equivalent to a public sale and the statute authorizing the appropriation is not violative of this section (124-271, 144+960). Eminent Domain, ¶46.

§ 3. Public schools in each township—No appropriation for sectarian schools—

This provision is mandatory on the legislature, and not a mere grant of power. G. S. §§ 2820, 2823, providing that one or more rural school districts may become associated with a high school for the purpose of affording education in agriculture, etc., and such associated school may charge tuition for nonresident pupils, which shall be a charge against the school district from which such nonresident pupils come, is within the legislative power. The power of the legislature in establishing schools in local communities is not confined to the common branches (122-254, 142+325, 47 L. R. A. [N. S.] 200). Schools and School Districts, ¶9, 10.

St. Paul commission government charter, in providing that the mayor shall designate one of the members of the council as commissioner of education, is not violative of this section, in that it introduces nonuniformity in the state school system (128-82, 150+389). Schools and School Districts, ¶10.

§ 4. University of Minnesota—

The university is a governmental function, and property may be taken for its use under the power of eminent domain (125-194, 145+967). Eminent Domain, ¶40.

§ 6. Investment of school funds—The permanent school and university fund of this state may be invested in the bonds of any county, school district, city, town, or village of this state, and in first mortgage loans secured upon improved and cultivated farm lands of this state. But no such investment or loan shall be made until approved by the board of commissioners designated by law to regulate the investment of the permanent school fund and the permanent university fund of this state; nor shall such loan or investment be made when the bonds to be issued or purchased would make the entire bonded indebtedness exceed 15 per cent of the assessed valuation of the taxable property of the county, school district, city, town or village issuing such bonds; nor shall any farm loan, or investment be made when such investment or loan would exceed 30 per cent of the actual cash value of the farm land mortgage to secure said investment; nor shall such investments or loans be made at a lower rate of interest than 3 per cent per annum, nor for a shorter period than five years, nor for a longer period than thirty years, and no change of the town, school district, city, village or of county lines shall relieve the real property in such town, school district, county, village or city in this state at the time of issuing of such bonds from any liability for taxation to pay such bonds.

Adopted November 3, 1896. Amended November 8, 1904, and November 7, 1916.

That resolution, under G. S. 1913 §§ 1882, 1885, provided that first of series of bonds should mature in less than five years, did not invalidate bonds, where subsequent resolution changed form of bonds so as to comply with requirement of constitution (122-59, 141+1105). Schools and School Districts, ¶97.

§ 7. Timber lands—State forests—Such of the school and other public lands of the state as are better adapted for the production of timber than for agriculture may be set apart as state school forests, or other state forests, as the Legislature may provide, and the Legislature may provide for the management of the same on forestry principles. The net revenue therefrom shall be used for the purposes for which the lands were granted to the state.

Adopted November 3, 1914.

ARTICLE 9

FINANCES OF THE STATE, AND BANKS AND BANKING

§ 1. Power of taxation—

132-232, 156+128.

Generally—The state may require its municipal subdivisions to raise and disburse money for the performance of duties of state concern (122-254, 142+325, 47 L. R. A. [N. S.] 200). Municipal Corporations, ¶64.

A license tax imposed by a city on vehicles, the proceeds of which are to be used in maintaining the city streets, is not unreasonable as to resident owners of vehicles habitually used on the city streets, because all the licenses issued expire at the same time, and because it fixes a minimum of one-quarter of the annual tax for use for a portion of a year (134-296, 159+627). Licenses, ¶7(1).

The legislature has power to impose a wheelage tax upon vehicles, and to provide that the proceeds shall be used for the maintenance of highways (134-296, 159+627). Licenses, ¶5.

"Local improvements"—An assessment for special benefits from a public ditch is a "local improvement" within this section (162+686). Drains, ¶82(5).

Special assessments—Special assessments for improvements must be limited to benefits, and, if in excess of benefits, there is a taking of property without compensation (129-40, 151+545, Ann. Cas. 1916B, 189). Eminent Domain, ¶2(11).

G. S. § 6286, exempting cemetery associations from assessments for local improvements, is not violative of this section (134-441, 159+962). Municipal Corporations, ¶407(1, 2).

The exemption of public school property from taxation does not apply to special assessments for local improvements (133-386, 158+635, L. R. A. 1916F, 861). Municipal Corporations, ¶426.

Sections 2348, 2349, G. S. 1913, do not contravene this section because a person may be singled out by a disinterested complainant, and his property reassessed on a basis different from that of other property (121-421, 141+839). Taxation, ¶40.

St. Paul Charter tit. 3 c. 6 §§ 7, 23, as amended, relating to assessments for local improvements, held not to discriminate between different property owners, in violation of this section (123-1, 142+886). Municipal Corporations, ¶407(2).

An assessment for a sidewalk made on the basis of frontage is not illegal (124-471, 145+377). Municipal Corporations, ¶469(4).

City charter provision for assessment of cost of sewers and street improvements on the abutting property according to frontage does not infringe the requirement as to uniformity, where the requirement that the assessment shall not exceed the benefits is not violated. Apportionment of cost of improvement of side street between corner lot and inside lots to center of block is not violative of the requirement as to uniformity (129-40, 151+545, Ann. Cas. 1916B, 189). Municipal Corporations, ¶407(2).

Equality and uniformity—An ordinance imposing a wheelage tax on vehicles, the proceeds of which were to be applied to the maintenance of the city streets, does not violate the provision of this section requiring uniformity of taxes on the same class of subjects (134-296, 159+627). Licenses, ¶7(2).

G. S. 1913, requiring a school district, sending pupils to another district maintaining a school for training in agriculture and domestic science, to pay a tuition charge for such pupils, is not violative of the requirement of uniformity of taxation (122-254, 142+325, 47 L. R. A. [N. S.] 200). Taxation, ¶40(4).

To construe G. S. 1913 § 1974, as including a membership in the Duluth Board of Trade, would not violate the equality clause of this section (124-398, 145+108, 50 L. R. A. [N. S.] 255, Ann. Cas. 1915C, 538). Taxation, ¶40(7).

The classification for taxation must be reasonable, and such as is based on essential differences. Section 1988, G. S. 1913, does not involve an unreasonable classification (128-384, 150+1087). Taxation, ¶394.

Double taxation of memberships in the Minneapolis Chamber of Commerce (see 161+516). Taxation, ¶47(1).

Double taxation; gross earnings tax (129-30, 151+410). Taxation, ¶47(7).

§ 3. Property subject to taxation—

A membership in the Duluth Board of Trade is property which the legislature, under the constitution, may tax (124-398, 145+108, 50 L. R. A. [N. S.] 255, Ann. Cas. 1915C, 538). Taxation, ¶87.

§ 5. Public debt may be contracted—

An order of a county board, establishing a state rural highway under G. S. 1913 § 2603 et seq., is not affected by the amount to the county's credit in the state road and bridge fund for the current year (125-325, 146+1110). Highways, ¶99.

1913 c. 257, authorizing the construction of a railway for the use of the University of Minnesota is not violative of the inhibition as to internal improvements; that prohibition not extending to the performance of the state's governmental functions (125-194, 145+967). States, ¶119.

§ 8. Application of loans—

G. S. 1913 § 2696, directing a division of the funds in the hands of treasurer of a school district between the old district and a new district created therefrom, is within the legislative power (126-209, 148+53). Schools and School Districts, ¶41(1).

§ 9. Payments out of treasury—

This section has no application to the issuance by the state auditor of a warrant on the state treasurer for the distribution of the gross earnings tax imposed on suburban railroad companies by G. S. 1913 § 2235 (125-67, 145+607). States, ¶130.

§ 10. State credit not to be loaned—

1913 c. 567 (§ 5541), in so far as it changes the mode of payment of compensation under existing contracts for the construction of drainage works, held not invalid as the bestowal of a private gratuity out of the public funds without the subserving of a public purpose (123-59, 142+945). Counties, ¶153½.

§ 14b. Municipal debts in aid of railroads—

125-351, 145+609, 50 L. R. A. (N. S.) 143.

§ 16.

An order of a county board establishing a state rural highway is not affected by the amount to the county's credit in the state road and bridge fund for the current year (125-325, 146+1110). Highways, ¶99.

ARTICLE 10**CORPORATIONS HAVING NO BANKING PRIVILEGES****§ 3. Liability of stockholders—**

132-9, 155+754; 127-346, 149+462, Ann. Cas. 1916C, 565; notes under G. S. 1913, § 6176.

Liability in general—Where a mercantile corporation sold products to a telephone company, and took stock in the latter company in payment, and the transaction was conducted by the authorized officers of the mercantile company, and was acquiesced in by its stockholders for nearly five years, the mercantile company is estopped to deny its liability as a stockholder under this section (161+713). Corporations, ¶262(1), 269(3).

What is a "manufacturing corporation"—The sale and transfer of his stock does not release a stockholder from the liability imposed by this section for debts of the corporation existing while he was a stockholder; but such liability is secondary to that of the transferee, and the liability of both is secondary to that of the corporation, and hence such stockholder stands in the position of a surety, and he may be released by the act of a creditor in granting an extension of time to the corporation, without his consent. The burden of proof of lack of such consent is on the stockholder, and in the present case, held, that the evidence does not show want of consent (135-339, 160+1014). Corporations, ¶244(1).

A corporation organized to conduct a general manufacturing business, and to generate and distribute electric energy, and to furnish electrical appliances of all kinds, and to act as electrical contractor and engineer, as well as other business specially authorized, is not a manufacturing corporation within this section; and its stockholders are liable to corporate creditors to the amount of their stock (161+223). Corporations, ¶219.

A corporation organized to generate electricity for distribution to the public is a "manufacturing corporation" under this section, though it possesses the power of eminent domain (125-20, 145+611). Corporations, ¶219.

Limitations in favor of stockholders—Accrual of action—Cause of action under this section accrues, so as to set limitations running, at time of declaration of insolvency and appointment of receiver, and not merely from date of assessment against stockholders (161+498). Limitation of Actions, ¶58(4).

§ 4. Lands taken for public way—

124-271, 144+960.

Where a side track becomes a part of the trackage of a railroad, to be operated as a part of its railway system, the taking of property therefor is a taking for a public use (135-323, 160+866). Eminent Domain, ¶20(5).

ARTICLE 11**COUNTIES AND TOWNSHIPS****§ 1. Organization—**

Cited (125-407, 147+815, L. R. A. 1915B, 401).

Cited (131-287, 155+92) on the proposition as to whether illegally marked ballots are to be counted in determining whether a majority of the votes cast at an election favored a particular proposition. Intoxicating Liquors, ¶35.

§ 3. Organization of townships—

The township constitutes a political subdivision of the state, and its powers and the manner of the exercise thereof is under legislative control, and it can exercise no powers not expressly or impliedly granted by statute; and the authority of its officers is likewise limited (133-270, 158+392).

§ 4. Election of county and township officers—

132-426, 157+652; note under art. 7 § 9.

G. S. 1913 §§ 809, 810, fixing the terms of certain county officers at four years, and operating prospectively, is not violative of this section or of art. 7 § 9 (133-65, 157+907). Counties, ~~65~~.

Sections 2348, 2349, G. S. 1913, authorizing appointment of a special assessor by the tax commission, is not violative of this section (121-421, 141+839).

ARTICLE 13**IMPEACHMENT AND REMOVAL FROM OFFICE****§ 1. Impeachment of certain state officers—**

Cited (124-73, 144+453).

§ 2. Removal—

While this section is applicable to elective city officers, it does not embrace an office created by ordinance, such as the supervisor of waterworks in the city of Minneapolis (124-73, 144+453). Municipal Corporations, ~~65~~176(6).

ARTICLE 14**AMENDMENTS TO THE CONSTITUTION****§ 1. Submission to the people—**

Cited (131-287, 155+92) on the proposition as to whether illegally marked ballots are to be counted in determining whether a majority of the votes cast have favored the measure submitted. Intoxicating Liquors, ~~65~~35.

ORGANIC ACT OF MINNESOTA**§ 1.**

122-483, 142+925; 205 Fed. 5, 123 C. C. A. 313, 45 L. R. A. (N. S.) 112, affirming (C. C.) 188 Fed. 356.

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